no legislative jurisdiction over the area to which the milk was delivered. In holding that California could not enforce its regulations, the court said (pp. 294–295):

> The exclusive character of the jurisdiction of the United States on Moffett Field is conceded. Article I, § 8, clause 17 of the Constitution of the United States declares the Congress shall have power "To exercise exclusive Legislation in all Cases whatsoever, over" the District of Columbia, "and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; * * *."
>
> When the federal government acquired the tract, local law not inconsistent with federal policy remained in force until altered by national legislation. The state statute involved was adopted long after the transfer of sovereignty and was without force in the enclave. It follows that contracts to sell and sales consummated within the enclave cannot be regulated by the California law. To hold otherwise would be to affirm that California may ignore the Constitutional provision that "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; * * * shall be the supreme Law of the Land; * * *." It would be a denial of the federal power "to exercise exclusive Legislation." As respects such federal territory Congress has the combined powers of a general and a state government.
>
> The answer of the State and of the court below is one of confession and avoidance,—confession that the law in fact operates to affect action by the appellant within federal territory, but avoidance of the conclusion of invalidity by the assertion that the law in essence is the regulation of conduct wholly within the state's jurisdiction.

> The court below points out that the statute regulates only the conduct of California's citizens within its own territory; that it is the purchasing, handling, and processing by the appellant in California of milk to be sold below the fixed price—not the sale on Moffett Field—which is prohibited, and entails the penalties prescribed by the statute. And reliance is placed upon the settled doctrine that a state is not disenabled from policing its own concerns, by the mere fact that its regulations may beget effects on those living beyond its borders. We think, however, that it is without application here, because of the authority granted the federal government over Moffett Field.
>
> In the light of the history of the legislation, we are constrained to find that the true purpose was to punish California's own citizens for doing in exclusively federal territory what by the law of the United States was there lawful, under the guise of penalizing preparatory conduct occurring in the State, to punish the appellant for a transaction carried on under sovereignty conferred by Art. I, § 8, clause 17 of the Constitution, and under authority superior to that of California by virtue of the supremacy clause.[3]

In the *Pennsylvania* case, which involved an area not subject to exclusive legislative jurisdiction, a contrary conclusion was reached. The court said (p. 269):

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[3] In *Consolidated Milk Producers* v. *Parker*, 19 Cal. 2d 815, 123 P. 2d 440 (1942), the court held a sale of milk within an exclusive Federal jurisdiction area not subject to State price regulation. The Attorney General of California ruled similarly even earlier. *Op. A. G., Cal.*, No. NS1905 (Aug. 26, 1939). But in *Commonwealth* v. *Rohrer*, 37 Pa. D. & C. 410 (1937), which involved similar facts, the court held that while the State has no jurisdiction with respect to crime committed wholly within an exclusive Federal area it does have jurisdiction over a crime, the essential elements of which were committed within the State, even though other elements thereof were committed in the ceded territory.

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> We may assume that Congress, in aid of its granted power to raise and support armies, Article I, § 8, cl. 12, and with the support of the supremacy clause, Article VI, § 2, could declare State regulations like the present inapplicable to sales to the government. * * * But there is no clause of the Constitution which purports, unaided by Congressional enactment, to prohibit such regulations, and the question with which we are now concerned is whether such a prohibition is to be implied from the relationship of the two governments established by the Constitution.
>
> We may assume also that, in this absence of Congressional consent, there is an implied constitutional immunity of the national government from state taxation and from state regulation of the performance, by federal officers and agencies, of governmental functions. * * * But those who contract to furnish supplies or render services to the government are not such agencies and do not perform governmental functions, * * * and the mere fact that non-discriminatory taxation or regulation of the contractor imposes an increased economic burden on the government is no longer regarded as bringing the contractor within any implied immunity of the government from state taxation or regulation.[4]

[4] In *Paterson Milk and Cream Co., Inc.* v. *Milk Control Board*, 118 N. J. L. 383, 192 Atl. 838 (1937), milk was sold to the United States Government but the jurisdictional status of the reservation was not indicated. Without considering the status of the Government land, the court held that the fact that it was the United States to which a dealer sold milk below the fixed price would be no justification for disregard of the reasonable regulations of the board. To the same effect is *Milk Control Board* v. *Gosselin's Dairy, Inc.*, 301 Mass. 174, 16 N. E. 2d 641 (1938). It may be noted that the Comptroller General, before and since the decision of the Supreme Court in the *Penn Dairies* case, has held that bids may not be rejected because they are below the minimum price fixed by State law, and that a contractor is obligated to furnish milk and cream at the bid price, or is liable for any excess cost in case of default, notwithstanding his violation of State law. 17 *Comp. Gen.* 287 (1937); *Comp. Gen. Dec.*, No. A-89192 (Jan. 31, 1939); *id.* B-67786 (Aug. 26, 1947).

In each of the *Dairy* cases there were dissents. A dissent in the *Pennsylvania* case was based on the ground that, in the view of the dissenting justice, Congressional policy contemplated securing milk at a price freely determined by competitive forces, and that, since the Pennsylvania regulation prevented the fruition of that policy, it was invalid. In two dissents in the *California* case, views were expressed which, if adopted, would require congressional action undertaking the exercise of jurisdiction over an area purchased with the consent of the State before the jurisdiction of the State would be ousted. It is emphasized that these views do not represent the state of the law. In one dissent it was said (pp. 305–306):

> The "exclusive legislation" clause has not been regarded as absolutely exclusory, and no convincing reason has been advanced why the nature of the federal power is such that it demands that all state legislation adopted subsequent to the acquisition of an enclave must have no application in the area. * * *
>
> If Congress exercises its paramount legislative power over Moffett Field to deny California the right to do as it has sought to do here, the matter is of course at an end. But until Congress does so, it should be the aim of the federal military procurement officers to observe statutes such as this established by state action in furtherance of the public health and welfare, and otherwise so conduct their affairs as to promote public confidence and good will.

The evident suggestion in this statement that the Federal Government must exercise its exclusive jurisdiction before State jurisdiction is ousted apparently is without Federal judicial precedent. Moreover, this view would, if carried to its logical conclusion, undermine the basis for the international law rule and render unnecessary the application of the rule to areas subject to exclusive legislative jurisdiction,[5] since it would

[5] See p. 156 *et seq.*, *supra*.

seem that, under this view, the laws of the State governing matters on which the Federal Government had not legislated would be fully effective in such areas. Finally, in view of the opinion expressed by the majority of the Court in the *Pennsylvania* case that Congress could direct noncompliance with the State regulation involved in that case, the dissenting justice's suggestion that noncompliance in areas of exclusive legislative jurisdiction must be based on a similar congressional direction would, it seems, serve to nullify legal distinctions between the two types of areas.

In a second dissent in the *California* case, there were expressed views somewhat similar to those indicated above. The other dissenting justice stated (p. 300):

> Enough has been said to show that the doctrine of "exclusive jurisdiction" over federal enclaves is not an imperative. The phrase is indeed a misnomer for the manifold legal phases of the diverse situations arising out of the existence of federally-owned lands within a state—problems calling not for a single, simple answer but for disposition in the light of the national purposes which an enclave serves. If Congress speaks, state power is of course determined by what Congress says. If Congress makes the law of the state in which there is a federal site as foreign there as is the law of China, then federal jurisdiction would really be exclusive. But short of such Congressional assertion of overriding authority, the phrase "exclusive jurisdiction" more often confounds than solves problems due to our federal system.

This suggestion that congressional action is an imperative to establish exclusive Federal legislative jurisdiction is, of course, subject to the same comment as is applicable to similar views expressed by the other dissenting justice. However, the second dissenting justice also deplored the varied results which are effected by different degrees of Federal jurisdiction, and

after citing some incongruities which might arise, he stated (p. 302):

> These are not far-fetched suppositions. They are the inevitable practical consequences of making decision here depend upon technicalities of "exclusive jurisdiction"—legal subtleties which may become relevant in dealing with prosecution for crime, devolution of property, liability for torts, and the like, but which as a matter of good sense surely are wholly irrelevant in defining the duty of contracting officers of the United States in making contracts in the various States of the Union, where neither Congress nor the authoritative voice of the Army has spoken. In the absence of such assertion of superior authority, state laws such as those here under consideration appear, as a matter of sound public policy, equally appropriate whether the federal territory encysted within a state be held on long or short term lease or be owned by the Government on whatever terms of cession may have been imposed.

The majority opinion in the *California* case anticipated the dissents and alluded to the suggestions contained in them as follows (pp. 295–296):

> We have this day held in *Penn Dairies* v. *Milk Control Commission*, *ante*, p. 261, that a different decision is required when the contract and the sales occur within a state's jurisdiction, absent specific national legislation excluding the operation of the state's regulatory laws. The conclusions may seem contradictory; but in preserving the balance between national and state power, seemingly inconsequential differences often require diverse results. This must be so, if we are to accord to various provisions of fundamental law their natural effect in the circumstances disclosed. So to do is not to make subtle or technical distinctions or to deal in legal refinements. Here we are bound to respect the relevant

> constitutional provision with respect to the exclusive power of Congress over federal lands. As Congress may, if it find the national interest so requires, override the state milk law of Pennsylvania as respects purchases for the Army, so it may, if not inimical to the same interest subject its purchasing officers on Moffett Field to the restrictions of the milk law of California. Until it speaks we should enforce the limits of power imposed by the provisions of the fundamental law.

The companion *Dairy* cases are significant in a number of respects. They illustrate sharply the effects of exclusive legislative jurisdiction in curbing the authority of the States. Quite clearly, they establish that the law of the State has no application in an area of exclusive legislative jurisdiction, and that such exclusion of State authority rests on the fact of exclusive legislative jurisdiction; it is unnecessary for Congress to speak to effect that result. Such jurisdiction serves to exclude not only the operation of State laws which constitute an interference with a Federal function, but also the application of State laws which are otherwise not objectionable on constitutional grounds.

The *Dairy* cases are also significant in that they indicate some disposition, as on the part of the justices constituting a minority of the court in the *California* case, to regard exclusive legislative jurisdiction as not constituting a barrier to the application of State law absent an expression by Congress that such barrier shall exist. Such a view constitutes, it seems clear, a sharp departure from overwhelming precedent, and serves to blur the historical legal distinctions between areas of exclusive legislative jurisdiction and areas in which the Federal Government has only a proprietorial interest.

The views of the majority of the Supreme Court in the *California* case are in accord with other decisions which have considered the effects of exclusive legislative jurisdiction on

the authority of the State with respect to the area subject to such jurisdiction.[6]

Authority to tax excluded.—Exclusive Federal legislative jurisdiction, it seems well settled, serves to immunize from State taxation privately owned property located in an area subject to such jurisdiction.[7] The leading case on this mat-

[6] See pp. 105 *et seq.*, and 145 *et seq.*, *supra*. Following the decisions in the *Dairy* cases, the Judge Advocate General of the Navy expressed the view that sales of milk to the Federal Government in an area where by State law concurrent jurisdiction only may be acquired might subject a milk dealer to prosecution in the State court if not in accord with local milk control laws. *Op. J. A. G., Navy*, JAG: II: 1: REC: mto (August 14, 1952).

[7] There should be distinguished, in this regard, cases wherein a court has allowed a tax on the basis that exclusive jurisdiction had not been transferred to the Federal Government. See p. 53 *et seq.*, *supra*. And in *Murphy Corp.* v. *Fontenot*, 225 La. 379, 73 So. 2d 180 (1954), *cert. den.*, 348 U. S. 831, taxation was allowed on a theory that a change in use for which land had been acquired terminated or suspended exclusive Federal jurisdiction. But in *Mississippi River Fuel Corporation* v. *Fontenot*, 234 F. 2d 898 (C. A. 5, 1956), *cert. den.*, 352 U. S. 916, imposition of a State tax on severance of gas and oil was allowed on such products severed, by a lessee, from land under exclusive Federal jurisdiction, on the ground that a provision of the lessee's contract with the Federal Government "to pay all taxes lawfully assessed and levied" was effective to prevent avoidance of a nondiscriminatory tax such as that which was involved. This case appears novel in attributing to the Executive branch authority to retrocede a measure of legislative jurisdiction unconditionally acquired by the Federal Government.

The Attorney General of Kentucky has ruled that property owned by a public utility company and located in an exclusive Federal jurisdiction area within the State should be included in the franchise assessment of the company, on the grounds that the applicable cession statute in terms excluded from taxation only federally owned property on such area, and that the situs of the general offices of the company within the State made all its property, wherever located, taxable. *Op. A. G., Ky.* (Aug. 21, 1953). The Attorney General of Wyoming has ruled that an insurance company qualified to do business within the State must pay a tax on all premiums collected on risks within the State, including risks located on exclusive Federal jurisdiction areas within the State. *Op. A. G., Wyo.* (June 13, 1949). The Attorney General of California has ruled that an insurance company doing business under a State license may not accept a bail bond negotiated in an exclusive jurisdiction area unless it is negotiated by a person licensed by the State, in view of a provision of the California code prohibiting such companies from doing business except through licensed solicitors. *Op. A. G., Cal.*, No. NS4349 (July 7, 1942).

ter is *Surplus Trading Co.* v. *Cook,* 281 U. S. 647 (1930), wherein the Supreme Court held that Arkansas was without authority to tax privately owned personal property located on a military reservation which was purchased by the Federal Government with the consent of the legislature of the State in which it was located. The Supreme Court based its conclusion on the following proposition of law (p. 652):

> It long has been settled that where lands for such a purpose are purchased by the United States with the consent of the state legislature the jurisdiction theretofore residing in the State passes, in virtue of the constitutional provision [viz., article I, section 8, clause 17], to the United States, thereby making the jurisdiction of the latter the sole jurisdiction.

In reaching its conclusion, the Supreme Court cited early cases such as *Commonwealth* v. *Clary,* 8 Mass. 72 (1811); *Mitchell* v. *Tibbetts,* 17 Pick. 298 (Mass., 1836); *United States* v. *Cornell,* 25 Fed. Cas. 646, No. 14,867 (C. C. D. R. I., 1819); and *Sinks* v. *Reese,* 19 Ohio St. 306 (1869). The Supreme Court also quoted with approval the statement which was made in reliance on these same early cases in *Fort Leavenworth R. R.* v. *Lowe, supra,* at 537:

> These authorities are sufficient to support the proposition which follows naturally from the language of the Constitution, that no other legislative power than that of Congress can be exercised over lands within a State purchased by the United States with her consent for one of the purposes designated; and that such consent under the Constitution operates to exclude all other legislative authority.

In the *Cook* case the area had been purchased by the Federal Government with the consent of the legislature of the State, jurisdiction thereby passing to the United States under clause 17. In *Standard Oil Company of California* v. *California,* 291 U. S. 242 (1934), the Supreme Court held that a *cession* of

exclusive legislative jurisdiction to the Federal Government by a State also served to deprive the latter of the authority to lay a license tax upon gasoline sold and delivered to an area which was the subject of the jurisdictional cession.[8] The Supreme Court said (p. 244):

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[8] Other decisions denying State taxing power: *Yellowstone Park Transp. Co.* v. *Gallatin County,* 31 F. 2d 644 (C. A. 9, 1929), *cert. den.,* 280 U. S. 555 (1929), (personal property tax); *State* v. *Blair,* 238 Ala. 377, 191 So. 237 (1939), (gasoline excise tax, but the same tax held applicable to withdrawals of gasoline within the State for transportation to an exclusive Federal jurisdiction area: *Pan American Petroleum Corp.* v. *Alabama,* 67 F. 2d 590 (C. A. 5, 1933)); *O'Pry Heating & Plumbing Co.* v. *State,* 241 Ala. 507, 3 So. 2d 316 (1941), (tax on privilege of doing business); *Op. A. G., Cal.,* LB 101/381 (Feb. 17, 1930), *id.* LB 107/450 (Jan. 10, 1931), (personal property taxes); *id.* No. 10328 (Nov. 19, 1935), (property tax on motor vehicles); *Op. A. G., Conn.* (Aug. 3, 1944), (old age assistance tax); *Op. A. G., Fla.,* 049-146 (Apr. 4, 1949), (personal property tax); *Moline Water Power Co.* v. *Cox,* 252 Ill. 348, 96 N. E. 1044 (1911), (real property tax on water power); *Op. A. G. Kan.* (May 4, 1953), (tax on leasehold or similar interest privately held for industrial purposes); *Hardin County Board of Supervisors* v. *Kentucky Limousines,* 293 S. W. 2d 239 (Ky., 1956), (*ad valorem* tax on autos as personal property); *Opinion of the Justices,* 1 Metc. 580 (Mass., 1841), (poll or property taxes, *cf. United States* v. *Cordy,* 58 F. 2d 1013 (D. Md., 1932), where sales tax held inapplicable because of the terms of the statute); *Op. A. G., Mo.* (Nov. 5, 1937), (tax on athletic show, contrary view reached in *Op. A. G., Mo.* (May 29, 1941), where no exclusive Federal jurisdiction involved); *State ex rel. Board of Commissioners* v. *Bruce,* 104 Mont. 500, 69 P. 2d 97 (1937), and 106 Mont. 322, 77 P. 2d 403 (1938), *aff'd.,* 305 U. S. 577 (personal property tax), but see *Valley County* v. *Thomas,* 109 Mont. 345, 97 P. 2d 345 (1939), *cf. County of Cherry* v. *Thacher,* 32 Neb. 350, 49 N. W. 351 (1891), (personal property tax upheld on ground that legislature had not parted with jurisdiction for such taxation, although no taxation reservation contained in cession statute); *Matter of Grant,* 83 Misc. 257, 144 N. Y. Supp. 567 (Sur. Ct., 1913), *aff'd.,* 166 App. Div. 921, 151 N. Y. Supp. 1119 (Sup. Ct. 1st Dept., 1915), (inheritance tax); *Op. A. G., Ohio,* No. 3042 (1925), p. 783 (tax on property); *Winston Bros. Co.* v. *State Tax Commission,* 156 Ore. 505, 62 P. 2d 7 (1936), *cert. den.,* 301 U. S. 689, *partially rev'd. in Winston Bros. Co.* v. *Galloway,* 168 Ore. 109, 121 P. 2d 457 (1942), (tax on privilege of a foreign corporation to do business); *Atkinson* v. *State Tax Comm'n,* 156 Ore. 461, 62 P. 2d 13 (1936), (tax on privilege of a foreign corporation to do business), *rev'd. on reh.,* and reversal *affirmed* in 303 U. S. 20 (1938), on the ground that the United States had not acquired exclusive jurisdiction; *Op. A. G., Texas,* R-2801 (tax on leased computers); *Concessions Co.* v. *Morris,* 109 Wash. 46, 186 Pac. 655 (1919), (personal property tax); a

> Appellant challenges the validity of the taxing act as construed by the Supreme Court. The argument is that since the State granted to the United States exclusive legislative jurisdiction over the Presidio, she is now without power to impose taxes in respect of sales and deliveries made therein. This claim, we think, is well-founded; * * *.

In *Coleman Bros. Corporation* v. *City of Franklin*, 58 F. Supp. 551 (D. N. H., 1945), *aff'd.*, 152 F. 2d 527 (C. A. 1, 1945), *cert. den.*, 328 U. S. 844, the same conclusion was reached with respect to the attempt of a city to tax the personal property used by a contractor in constructing a dam on an area of exclusive Federal legislative jurisdiction,[9] and in *Winston Bros. Co.* v. *Galloway*, 168 Ore. 109, 121 P. 2d 457 (1942), there is distinguished the applicability of a tax on net earnings from work done by a Federal contractor on land over which the Federal Government did not have legislative jurisdiction, and that done on land over which it did have jurisdiction.

Other authority excluded.—Attempts on the part of the States to regulate other activities in areas under Federal legislative jurisdiction have met with the same fate as attempts to control milk prices and to levy taxes.[10] Thus, in *In re Ladd*,

State has no authority to collect poll and road taxes from either civilian or military residents of areas of exclusive legislative jurisdiction. *Op. J. A. G., Navy*, KP59N1-13 (360210), (November 3, 1936).

[9] A contractor performing a contract for the erection of a Government post office on Government land who used the adjoining sidewalk to the exclusion of the public was transacting business in the State, and was subject to the contractor's license tax levied by the State. *Sollitt & Sons Construction Company* v. *Commonwealth*, 161 Va. 854, 172 S. E. 290 (1934), *app. dism. for want of a substantial Federal question*, 292 U. S. 599.

[10] A State has no authority to require that a vessel carrying stone from one State to an area under exclusive Federal jurisdiction in another be weighed and marked in a specified manner (*Mitchell* v. *Tibbetts*, 17 Pick. 298 (Mass., 1836)), or to prevent the deposit of stone or other materials on an area under exclusive Federal jurisdiction (9 *Ops. A. G.* 319 (1859)).

In *Hughes Transp., Inc.* v. *United States*, 128 C. Cls. 221, 121 F. Supp. 212 (1954), (but *rehearing granted*, 132 C. Cls. 804 (1955)), it was found that transportation of goods between two Federal enclaves within the boundaries

74 Fed. 31 (C. C. D. Neb., 1896), it was held that the laws of Nebraska requiring a permit to sell liquor do not apply to areas of exclusive legislative jurisdiction. See also *Farley* v. *Scherno*,

of a single State constituted intrastate transportation, and as such was subject to State rate regulation. In *United States* v. *Public Utilities Comm. of Cal.*, 141 F. Supp. 168 (N. D. Cal., 1956), (*notice of appeal to U. S. Supreme Court filed*, and *probable jurisdiction noted* by the court on Dec. 3, 1956), the District Court, on June 5, 1956, entered a judgment enjoining rate regulation by the State in such cases, but its judgment extended to prevent regulation of rates as to any Federal contracts of transportation, based on Federal supremacy. But see *Motor Transport Co.* v. *McCanless*, 182 Tenn. 659, 189 S. W. 2d 200 (1945), and discussion on p. 299, *infra*.

State laws prohibiting the carrying of weapons have no application within naval reservations which are under the exclusive jurisdiction of the United States. *Op. J. A. G., Navy*, NY4/L9-2 (401018), (Nov. 1, 1940).

A State statute relating to horse racing is not applicable in an exclusive Federal jurisdiction area (*Op. A. G., Fla.* (Nov. 27, 1935)), nor is a State law regulating the sale of eggs (*id.* (Apr. 22, 1940), 0-792).

Laws of a State requiring the reporting of fires are not applicable to a military reservation over which the United States has exclusive legislative jurisdiction. *Op. J. A. G., Army*, 000.71 (Mar. 16, 1926).

A State fair trade act was held inapplicable in an exclusive Federal jurisdiction area. *Sunbeam Corp.* v. *Central Housekeeping Mart, Inc.*, 2 Ill. App. 2d 543, 120 N. E. 2d 362 (1954). (So construed by Atty. Gen. of Illinois, and so interpreted in *Sunbeam Corp.* v. *Horn*, 149 F. Supp. 423 (S. D. Ohio, 1955)).

No State has the authority to insist upon furnishing coroner service or making investigations as to the cause of death occurring on an exclusive Federal jurisdiction area, or to prohibit the shipment of an unembalmed body from such area into the State. *Memo Oct. 4, 1951, from Director, National Park Service, Department of the Interior, to Regional Director, Region Two, National Park Service, Department of the Interior.* To same general effect: 1 *Ops. A. G. Cal.* 176 (Mar. 18, 1943); *Op. A. G., Ill.*, No. 98 (Nov. 12, 1941); *Op. A. G., Tex.*, No. V. 380; *Ops. J. A. G., Navy*, JAG: II:1:REC:wln (Sept. 21, 1953); JG:6769-21 (July 19, 1911); JG:26250-331 (Feb. 24, 1912); JG: 26283-988.5 (Feb. 18, 1916). It is not necessary for a State permit to be issued by the State of Wyoming for shipment of a body from an exclusive Federal jurisdiction area in Wyoming to a point without the State. *Op. Dep. A. G., Wyo.* (Oct. 4, 1949). See also *County of Allegheny* v. *McClung*, 53 Pa. 482 (1867).

Insurance license and regulation laws of California are not applicable to persons doing business in Federal enclaves within the State. *Op. A. G. Cal.*, LB286/906 (Apr. 1, 1952), overruling earlier opinions (1 *Ops. A. G. Cal.* 464 (May 21, 1943); 6 *Ops. A. G. Cal.* 57 (Aug. 8, 1945)).

State laws respecting segregation of the races are inapplicable to recreational facilities operated by the Tennessee Valley Authority at reservoirs

208 N. Y. 269, 101 N. E. 891 (1913).[11] A State cannot, without an express reservation of authority to do so, enforce in an area under Federal legislative jurisdiction the regulatory features of its Alcoholic Beverage Control Act. *Collins* v. *Yosemite Park Co.*, 304 U. S. 518 (1938).[12] Nor may a State license, under its Alcoholic Beverage Control Act, sale of liquor in an area which is within the exterior boundaries of the State but under exclusive Federal jurisdiction. *Petersen* v. *United States*, 191 F. 2d 154 (C. A. 9, 1951), *cert. den.*, 342 U. S. 885.

under the exclusive jurisdiction of the United States. *Memo Apr. 5, 1949 from General Counsel to Manager of Reservoir and Community Relations, Tennessee Valley Authority.* See also *Air Terminal Services, Inc.* v. *Rentzel*, 81 F. Supp. 611 (E. D. Va., 1949), and *Nash* v. *Air Terminal Services, Inc.*, 85 F. Supp. 545 (E. D. Va., 1949). Such segregation laws are inapplicable either to patients or personnel of Army treatment facilities irrespective of the jurisdictional status of the installation. *Op. J. A. G., Army*, 1943/19368 (Dec. 23, 1943).

[11] But in *State* v. *Mimms*, 43 N. M. 318, 92 P. 2d 993 (1939), *cert. den.*, 308 U. S. 626 (1940), the State court held that, notwithstanding the transfer of exclusive jurisdiction from the State to the United States (but it is not clear that any transfer occurred), the State's jurisdiction "to tax and regulate the liquor industry within its boundaries will not be presumed to have been legislated away" unless such cession can be clearly found in the statute. The Attorney General of Texas has held, however, that a license to sell beer was necessary only absent a showing of transfer to Federal Government of jurisdiction over the place of sale. *Op. A. G., Tex., No.* 0–3903.

[12] This ruling has been followed by several Federal Departments. *E. g.:* the Department of the Navy has held that the provisions of the Virginia Beverage Control Act do not apply to sales on lands under the exclusive jurisdiction of the United States. *Op. J. A. G., Navy*, JAG : II : 1 : RLB : imz (Nov. 5, 1952). The Department of the Army has expressed the view that State law pertaining to the methods of dispensing liquor and the various restrictions placed on tavern keepers have no application on areas over which the United States exercises exclusive jurisdiction. *Op. J. A. G., Army*, 414.1 (May 17, 1940). The Department of the Interior has expressed the opinion that a State license is not required for sales either on Government-owned or private land within the boundaries of a national park under exclusive Federal jurisdiction. *Undated memo from Acting Director to Regional Director, Region 2, National Park Service, Department of the Interior.* A business privilege tax, being in the nature of a license to do business, may not be imposed by the State on persons doing business in a Federal enclave notwithstanding State reservation of the power of taxation. *Op. A. G., Cal.*, No. 10,467 (Jan. 14, 1936).

And, it appears, a State may not prevent, tax, or regulate the shipment of liquor from outside of the State to an area within the exterior boundaries of the State but under exclusive Federal legislative jurisdiction. *Johnson* v. *Yellow Cab Transit Co.*, 321 U. S. 383 (1944);[13] see also *State* v. *Cobaugh*, 78 Me. 401 (1886); and *Maynard & Child, Inc.* v. *Shearer*, 290 S. W. 2d 790 (Ky., 1956). But it has been held that a wholesaler may not make a shipment of liquor to an area within the same State which is subject to exclusive Federal jurisdiction under a license from the State to export liquor, nor to an unlicensed purchaser in the area where the wholesaler's license for domestic sales limited such sales to licensed purchasers. *McKesson & Robbins* v. *Collins*, 18 Cal. App. 2d 648, 64 P. 2d 469 (1937). And an excise tax has been held applicable to liquor sold to (but not by) retailers located on Federal enclaves, where the tax is on sales by wholesalers. *Op. A. G., Cal.*, No. 10,255 (Oct. 8, 1935).

State laws (and local ordinances) which provide for administrative action have no application to areas under exclusive Federal legislative jurisdiction.[14] State and local governments cannot enforce ordinances relating to licenses, bonds, inspections, etc., with respect to construction in areas under exclusive

[13] On the basis of this ruling of the Supreme Court the Department of the Army has taken the position that a State has no authority to prohibit the importation of liquors destined for military reservations, *Op. J. A. G., Army*, 1954/5868 (July 12, 1954), or to require that the liquors so consigned be channelled through State warehouses and subjected to taxes and other charges, *id.* 1953/7206 (Sept. 15, 1953); and the Department of the Navy has expressed the view that shipment of alcoholic beverages from outside a State to an officers' club on a naval reservation within the State under the exclusive jurisdiction of the United States is not an importation into the State. *Op. J. A. G., Navy*, L14–1 (410108), (May 5, 1941).

The Attorney General of Missouri has ruled that the State has no right to tax or regulate liquors imported into an exclusive legislative jurisdiction area. *Ops. A. G., Mo.* (Apr. 26, 1936; Jan. 15, 1940; and June 12, 1942). The Attorney General of Connecticut has ruled similarly, *Op. A. G., Conn.* (Oct. 26, 1937); as has the Attorney General of Ohio, *Op. A. G., Ohio*, No. 1320 (1937), p. 2255; *id.* No. 3838 (1954), p. 265.

[14] See p. 161 *et seq.*, *supra*.

Federal jurisdiction. *Oklahoma City, et al.* v. *Sanders*, 94 F. 2d 323 (C. A. 10, 1953); *Op. A. G., N. M.*, No. 5340 (Mar. 6, 1951); *id.* No. 5348 (Mar. 29, 1951);[15] see also *Birmingham* v. *Thompson*, 200 F. 2d 505 (C. A. 5, 1952). Other State and local licensing provisions are also inapplicable in such areas.[16] A State cannot enforce its game laws in an area where exclusive legislative jurisdiction over wildlife has been ceded to the United States. *Chalk* v. *United States*, 114 F. 2d 207 (C. A. 4, 1940), *cert. den.*, 312 U. S. 679.[17]

[15] A contrary decision would have given States a greater authority in areas under Federal legislative jurisdiction than they have in federally owned areas as to which the Federal Government has merely a proprietorial interest. See chapter IX, *infra*.

[16] A physician who is engaged to render care and medical attention to those constructing a Federal building upon property over which the United States has exclusive jurisdiction is not subject to State law relating to the practice of medicine and surgery. *Lynch* v. *Hammock*, 204 Ark. 911, 165 S. W. 2d 369 (1942). To the same effect, but involving the practice of massage, is *Ladwig* v. *Nance*, 223 Ark. 559, 267 S. W. 2d 314 (1954). It has also been held that an optician maintaining his office in a post exchange on a Federal enclave may not be required by the State to obtain a State license. *Op. A. G., Cal.*, No. 3714 (Aug. 14, 1941).

The Judge Advocate General of the Army has expressed the view that generally State licensing laws have no application to persons doing business on a reservation over which the United States has exclusive jurisdiction. *Op. J. A. G., Army*, 004.6 (June 27, 1942).

Neither State nor local authorities may enforce health laws and regulations upon exclusive Federal jurisdiction areas, *Op. A. G., Ohio*, No. 3704 (1941), p. 319; nor may a State regulate the sale of securities in such areas, *Op. A. G., Fla.*, No. 054–109 (May 4, 1954). But the Attorney General of Utah has ruled that State sanitation regulations may be enforced, where the State has retained concurrent jurisdiction, unless they are in conflict with Federal law. *Op. A. G., Utah* (Nov. 13, 1945).

[17] The Judge Advocate General of the Navy before the decision in this case reasoned to a similar view. *Op. J. A. G., Navy*, NR 103/N1–13 (381028), (Dec. 7, 1938).

The Attorney General of Pennsylvania has held that the State has no jurisdiction to arrest or prosecute for violations of its fishing laws committed on areas over which the United States has exclusive legislative jurisdiction. *Op. Dep. A. G., Pa.*, 39 Pa. D. & C. 134 (July 15, 1940). The Attorney General of Ohio has ruled similarly. *Op. A. G., Ohio*, No. 2890 (1940), p. 923. Where the State has retained concurrent jurisdiction, such laws may be enforced by State officials. *Op. A. G., Utah*, No. 54–060. And, of course, this is true where the Federal Government has not acquired any legislative jurisdiction. *Op. A. G., Cal.*, No. 10,715 (May 22, 1936); *id.* No. NS 2238 (Dec. 30, 1939).

None of the laws of a State imposing special duties upon its residents are applicable to residents of areas under exclusive Federal legislative jurisdiction. In one of the very earliest cases relating to exclusive Federal legislative jurisdiction, it was stated that inhabitants of such areas are not "held to pay any taxes imposed by its [*i. e. the State's*] authority, nor bound by any of its laws," and it was reasoned that it might be very inconvenient to the United States to have "their laborers, artificers, officers, and other persons employed in their service, subjected to the services required by the Commonwealth of the inhabitants of the several towns." *Commonwealth* v. *Clary*, 8 Mass. 72 (1811). A State statute requiring residents of the State to work on State roads is not applicable to residents of an area subject to exclusive Federal legislative jurisdiction. 16 *Ops. A. G.* 468 (1880); *Pundt* v. *Pendleton*, 167 Fed. 997 (N. D. Ga., 1909).

But in *Bailey* v. *Smith*, 40 F. 2d 958 (S. D. Iowa, 1928), it was held that a resident of an exclusive Federal jurisdiction area was not exempt under a State automobile registration law which exempted persons who had complied with registration laws of the State, territory, or Federal district of their residence, the term "Federal district" being construed to apply only to the District of Columbia, and the United States Supreme Court has upheld a requirement for registration with the State under similar circumstances. *Storaasli* v. *Minnesota*, 283 U. S. 57 (1931). See also *Valley County* v. *Thomas*, 109 Mont. 345, 97 P. 2d 345 (1939).[18]

[18] A State auto license tax which is a tax for the privilege of using State highways held applicable to residents of Federal enclaves, *Op. A. G., Cal.*, No. 10,417 (Jan. 20, 1936). A resident of an exclusive Federal jurisdiction area may not drive an automobile upon State highways outside of the area without a license; but upon proof of such residence he may be issued a license, notwithstanding that his car has not been returned for taxation. *Op. A. G., Ohio*, No. 3042 (1925), p. 783. See also footnote 2, p. 106, *supra*, and matter on p. 293, *et seq.*, *infra*.

Status of State and municipal services.—The Comptroller General of the United States consistently and on a number of occasions has disapproved proposed payment by the Federal Government to a State or local government of funds for fire-fighting on a Federal installation, either for services already rendered or for services to be rendered on a contractual basis.[19] In support of his position he has maintained that there exists a legal duty upon municipal or other fire-fighting organizations to extinguish fires within the limits of their municipal or other boundaries. He has not, in his decisions on these matters, distinguished between areas which are and those which are not under the legislative jurisdiction of the United States.[20]

The Comptroller General has indicated that his views relating to fire-fighting extend to other similar services ordinarily rendered by or under the authority of a State. See 6 *Comp. Gen.* 741 (1927); *Comp. Gen. Dec.* B–50348 (July 6, 1945); *cf. id.* B–51630 (Sept. 11, 1945), where estimates and hearings made clear that an appropriation act was to cover cost of police and fire protection under agreements with municipalities. In disapproving a proposed payment to a municipality for fire-fighting services performed on a Federal installation, he said (24 Comp. Gen. 599, 603):

> * * * if a city may charge the Federal Government for the service of its fire department under the circumstances here involved, would it not follow that a charge could be made for the service of its police department, the services of its street-cleaning department and all similar service usually rendered by a city for the benefit and welfare of its inhabitants.

[19] 24 *Comp. Gen.* 599 (1945); 26 *Comp. Gen.* 382 (1946); 30 *Comp. Gen.* 376 (1951); see also *Comp. Gen. Dec.* B–126228 (Jan. 6, 1956); *id.* B–105602 (Dec. 17, 1951); *id.* B–28369 (Sept. 22, 1942).

[20] See discussion in chapter 8, *infra*, particularly p. 238 *et seq.*, *infra*, of a concept of extraterritoriality of areas which are under exclusive Federal jurisdiction as it relates to the status of residents of such areas.

No court decisions dealing directly with questions of obligation for the rendering of State and municipal services to Federal installations have been found. It would appear, however, with respect to Federal areas over which a State exercises legislative jurisdiction, that while the furnishing of fire-fighting and similar services would be a matter for the consideration of officials of the State or a local government, the obligation to furnish them would be a concomitant of the powers exercised by those authorities within such areas (*Comp. Gen. Dec.* B–126228 (Jan. 6, 1956)).[21]

It may be noted that the Congress has provided authority for Federal agencies to enter into reciprocal agreements with fire-fighting organizations for mutual aid in furnishing fire protection, and, further, for Federal rendering of emergency fire-fighting assistance in the absence of a reciprocal agreement.[22]

Service of process.—It has been held many times that the reservation by a State (or the grant to the States by the United States) [23] of the right to serve process in an area is not inconsistent with Federal exercise of exclusive jurisdiction over the area.[24] In each of the instances in which the consistency with exclusive Federal jurisdiction of a State's right to serve process has been upheld, however, either the State had expressly reserved this right or the Congress had authorized such service. It seems entirely probable that in the absence of either a reservation or a Federal statutory authorization covering the matter a State would have no greater authority to serve process

[21] See also *report*, part I, p. 50 *et seq.* And the Attorney General of Ohio has ruled that a federally owned area (used by the State under a license agreement) was entitled to the same degree of fire protection as accorded any other areas of the township in which it was located. *Op. A. G., Ohio*, No. 3374 (1953) p. 733.

[22] Act of May 27, 1955, 69 Stat. 66, 42 U. S. C. 1856 *et seq.*; see also 32 *Comp. Gen.* 91 (1952). Expenditure, from a general appropriation, of funds for purchase of membership in a voluntary fire organization has been authorized where obligation to furnish protection does not otherwise devolve on organization. 34 *Comp. Gen.* 195 (1954).

[23] See p. 35, *supra*.

[24] See p. 118, *et seq.*, *supra*.

in an area of exclusive Federal jurisdiction than it does in an area beyond its boundaries.[25] It has been so held by the Attorney General.[26]

STATE RESERVATIONS OF JURISDICTION: *In general.*—In ceding legislative jurisdiction to the Federal Government, and also in consenting to the purchase of land by the Federal Government pursuant to article I, section 8, clause 17, of the Constitution, it is a common practice of the States to reserve varying quanta of jurisdiction.[27]

There is now firmly established the legal and constitutional propriety of reservations of jurisdiction in State consent [28] and cession [29] statutes. Subject to only one general limitation, a State has unlimited discretion in determining the character and scope of the reservations which it desires to include in such statutes. The sum and substance of the limitation appears to be that a State may not by a reservation enlarge its authority with respect to the area in question; or, to put it conversely, that a reservation of jurisdiction by a State may not diminish or detract from the power and authority which the Federal Government possesses in the absence of a transfer to it of legislative jurisdiction.[30]

Reservations construed.—State reservations of jurisdiction have presented few legal problems. In no instance has a State reservation of jurisdiction been invalidated, or its scope narrowed, on the ground that its effect was to enlarge the power of the State or to interfere with the functions of the Federal Government. Instead, the reported cases involving such reservations have presented questions concerning the scope of the reservations actually made. Thus, in *Collins* v. *Yosemite Park Co.*, 304 U. S. 518 (1938), it was held that a reservation by a State of the right to tax the sale of liquor does not include the right to enforce the regulatory features of the State's alcoholic beverage control act in an area in which, except *inter alia* the right to tax, the entire jurisdiction of the State had been ceded to the Federal Government. Similarly, in *Birmingham* v. *Thompson*, 200 F. 2d 505 (C. A. 5, 1952), it was held that even though the State, in ceding jurisdiction to the Federal Government, reserved the right to tax persons in the area over which jurisdiction had been ceded, a city could not require the payment of a license fee by a contractor operating in the area where issuance of the license was coupled with a variety of regulatory provisions. The results reached in these two cases suggest that State statutes transferring jurisdiction will be construed strictly.[31] Only those matters expressly mentioned as reserved will remain subject to the jurisdiction of the State.[32]

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[25] Having reserved or been granted the right to serve process, however, a State must be given access to areas under Federal jurisdiction for the purpose of effecting such service by its officials, subject at most to reasonable Federal regulations designed to prevent interference with Federal functions conducted on such areas. *Op. J. A. G., Navy*, JAG:J:JAL; amp (Aug. 5, 1943); *id.* LL/A17-8 (370817), (Aug. 28, 1937). To the same effect is a decision of the Judge Advocate General of the Army. *Op. A. G., Army*, 1950/4487 (Aug. 17, 1950).

[26] 23 *Ops. A. G.* 254 (1900). See also *People of the State of California* v. *United States*, 235 F. 2d 647, 655, 661 (C. A. 9, 1956).

[27] *Report*, part I, p. 28 *et seq.*, and p. 127 *et seq.*

[28] P. 62 *et seq.*, *supra.*

[29] P. 60 *et seq.*, *supra.*

[30] P. 64, *supra.*

[31] See also *In re Kelly*, 71 Fed. 545 (C. C. E. D. Wis., 1895); *Six Cos., Inc.* v. *De Vinney*, 2 F. Supp. 693 (D. Nev., 1933); *People* v. *Godfrey*, 17 Johns. 225 (N. Y., 1819); *Oscar Daniels Co.* v. *Sault Ste. Marie*, 208 Mich. 363, 175 N. W. 160 (1919); *State* v. *Mendez*, 57 Nev. 192, 61 P. 2d 300 (1936); *Ryan* v. *State*, 188 Wash. 115, 61 P. 2d 1276 (1936), *aff'd.*, *sub nom. Mason Co.* v. *Tax Comm'n*, 302 U. S. 186 (1937), but see *State ex rel. Board of Commissioners* v. *Bruce*, 106 Mont. 322, 77 P. 2d 403 (1938), *aff'd.*, 305 U. S. 577, and *Valley County* v. *Thomas*, 109 Mont. 345, 97 P. 2d 345 (1939); *Standard Oil Co. of California* v. *Johnson*, 10 Cal. 2d 758, 76 P. 2d 1184 (1938); *Buckstaff Bath House Co.* v. *McKinley*, 308 U. S. 358 (1939); *Superior Bath House Co.* v. *McCarroll*, 312 U. S. 176 (1941); *Collins* v. *Yosemite Park Co.*, 304 U. S. 518 (1938). See also p. 88, *supra.*

[32] State tax laws are enforceable as to private persons and property on areas under the partial legislative jurisdiction of the United States if the reservation of State jurisdiction includes the power to tax. *James* v. *Dravo Contracting Co.*, 302 U. S. 134 (1937); *Fort Leavenworth R. R.* v. *Lowe*, 114 U. S. 525 (1885); *Rainier Nat. Park Co.* v. *Martin*, 18 F. Supp. 481 (W. D. Wash., 1937), *aff'd.*, 23 F. Supp. 60, *aff'd.*, 302 U. S. 661 (1938); *Yosemite Park & Curry Co.* v. *Johnson*, 10 Cal. 2d 770, 76 P. 2d 1191 (1938). See also pp. 57 *et seq.*, 117 *et seq.*, & 147, *supra*, for discussions of reservations.

AUTHORITY OF THE STATES UNDER FEDERAL STATUTES: *In general.*—In order to ameliorate some of the practical consequences of exclusive legislative jurisdiction, Congress has enacted legislation permitting the extension and application of certain State laws to areas under Federal legislative jurisdiction. Thus, Congress has authorized the States to extend to such areas certain State taxes on motor fuel (the so-called "Lea Act," 4 U. S. C. 104); to apply sales, use, and income taxes to such areas (the so-called "Buck Act," 4 U. S. C. 105 *et seq.*); to tax certain private leasehold interests on Government owned lands (the so-called "Military Leasing Act of 1947," 61 Stat. 774);[33] and to extend to Federal areas their workmen's compensation and unemployment compensation laws (26 U. S. C. 3305 (formerly 1606), subsec. (d), and act of June 25, 1936, 49 Stat. 1938, 40 U. S. C. 290, respectively).[34] Congress has also enacted a statute retroceding to the States jurisdiction pertaining to the administration of estates of decedent residents of Veterans' Administration facilities,[35] and, from time to time, various legislation providing for Federal exercise of less than exclusive jurisdiction in specific areas where conditions in the particular area or the character of the Federal undertaking thereon indicated the desirability of the extension of a measure of the State's jurisdiction to such areas.[36]

Lea Act.—A 1936 statute,[37] variously known as the Lea Act and the Hayden-Cartwright Act, amended the Federal Highway Aid Act of 1916, by providing (section 10):

> That all taxes levied by any State, Territory or the District of Columbia upon sales of gasoline and other motor

[33] Formerly 10 U. S. C. 1270 (d), but in 1956 re-enacted as 10 U. S. C. 2667 (e).

[34] For the full texts of these statutes, see *report*, part I, pp. 238–244.

[35] 38 U. S. C. 16–16j, see p. 235, *infra*.

[36] For illustrations of such statutes reference may be had to provisions contained in chapter I of title 16, U. S. C., fixing the jurisdictional status of various national parks.

[37] Act of June 16, 1936, 49 Stat. 1521, 4 U. S. C. 104.

> vehicle fuels may be levied, in the same manner and to the same extent, upon such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. * * *

The legislative history of this particular section of the act is meager and appears to be limited to matter contained in the Congressional Record.[38] It is indicated that the language of this section was sponsored by organizations of State highway and taxing officials. An amendment comprised of this language was offered by Senator Hayden, of Arizona, and was read and passed by the Senate without question or debate. It is logical to assume that the amendment was inspired by the decision of the Supreme Court in the *Standard Oil Company* case discussed on page 178, above.

Under this section, as it was amended by the Buck Act in 1940,[39] States are given the right to levy and collect motor vehicle fuel taxes within Federal areas, regardless of the form of such taxes, to the same extent as though such areas were not Federal, unless the fuel is for the exclusive use of the Federal Government. *Sanders* v. *Oklahoma Tax Commission*, 197 Okla. 285, 169 P. 2d 748 (1946), *cert. den.*, 329 U. S. 780.[40] Sales to Government contractors are taxable under the act,[41] but not sales to Army post exchanges, which are arms of the

[38] 80 Cong. Rec. 6913 (1936).

[39] See p. 200, *infra*.

[40] See also *Minnesota* v. *Keeley*, 126 F. 2d 863 (C. A. 8, 1942), reversing *Minnesota* v. *Ristine*, 36 F. Supp. 3 (D. Minn., 1940), and *cf. State* v. *Yellowstone Park Co.*, 57 Wyo. 502, 121 P. 2d 170 (1942), *cert. den.*, 316 U. S. 689; the first cited case approved, and the last disapproved, taxes based on use rather than sales *under the original form of this statute* prior to its amendment by the Buck Act (see p. 200, *infra*).

[41] *Texas Co.* v. *Siefried*, 60 Wyo. 142, 147 P. 2d 837 (1944), *reh. den.*, 60 Wyo. 174, 150 P. 2d 99.

Federal Government and partake of its immunities under this act.[42]

Buck Act.—Four years later, in 1940, Congress enacted a retrocession statute of wide effect. This law,[43] commonly known as the Buck Act, retroceded to the States partial jurisdiction over Federal areas so as to permit the imposition and collection of State sales and use taxes and income taxes within Federal areas. The Federal Government and its instrumentalities were excepted.

The House of Representatives passed a bill during the first session of the 76th Congress which embodied nearly all of the aspects of the statute finally enacted, except the features relating to the collection of income taxes from Federal employees residing on Federal enclaves and to an amendment of the Hayden-Cartwright Act of 1936. These additional matters were added as amendments to the House bill after Senate hearings were held.[44] The intent behind the House bill, passed during the first session of the 76th Congress, as stated in the report[45] accompanying the bill to the floor was:

> The purpose of H. R. 6687 is to provide for uniformity in the administration of State sales and use taxes within as well as without Federal areas. It proposes to authorize the levy of State taxes with respect to or measured by sales or purchases of tangible personal property on Federal areas. The taxes would in the vast majority of cases be paid to the State by sellers whose places of business are located off the Federal areas and who make sales of property to be delivered in such areas.
>
> The application of such taxes to the gross receipts of a retailer from sales in which delivery is made to an area

[42] See *Standard Oil Co.* v. *Johnson*, 316 U. S. 481 (1942), and other cases cited in footnote 48 (p. 198), *infra*.

[43] Act of Oct. 9, 1940, 54 Stat. 1059, 4 U. S. C. 105–110.

[44] Hearing before a Subcommittee of the Committee on Finance, United States Senate, 76th Cong., 3d Sess., on H. R. 6687 (Apr. 23, 1940).

[45] H. Rept. No. 1267, 76th Cong., 1st Sess. 10301 (1939).

> over which it is asserted the United States possesses exclusive jurisdiction is being vigorously contested even though the retailer's place of business is located off the Federal area and the negotiations leading to the sale are conducted and the contract of sale is executed at the retailer's place of business. Despite the existence of these facts, which are generally sufficient to give rise to liability for the tax, and which, insofar as the theory of the tax is concerned, should, in the opinion of your committee, be sufficient to impose tax liability, exemption from the tax is asserted upon the ground that title to the property sold passes on the Federal area and, accordingly, the sale occurs on land over which the State lacks authority.
>
> Passage of this bill will clearly establish the authority of the State to impose its sales tax with respect to sales completed by delivery on Federal areas, and except insofar as the State tax might be a prohibited burden upon the United States would not, with the exception hereinafter noted, impose any duty upon any person residing or located upon the Federal area. Such action would merely remove any doubt which now exists concerning the authority of the State to require retailers located within the State and off the Federal areas to report and pay the tax on the gross receipts from their sales in which delivery is made to a Federal area. A minor problem presented with respect to the application of State sales taxes on Federal areas involves the responsibility for such taxes of post exchanges, ship-service stores, commissaries, licensed traders, and other similar agencies operating on Federal areas.
>
> Congress, in the amendment of section 10 of the Hayden-Cartwright Act, provided for the application of motor-vehicle fuel taxes with respect to the sales or distributions of such agencies. It would appear therefore to be entirely proper to provide for the application of sales

> taxes with respect to the retail sales of tangible personal property of such agencies.
>
> The States have been extremely generous in granting to the United States exclusive jurisdiction over Federal areas in order that any conflicts between the authority of the United States and a State might be avoided. It would appear to be an equally sound policy for the United States to prevent the avoidance of State sales taxes with respect to sales on Federal areas by specifically authorizing, except insofar as the taxes may constitute a burden upon the United States, the application of such taxes on those areas.

The House bill was amended by the Senate and therefore certain portions of this report must be read in the light of Senate changes in the bill.

The report [46] of the Senate Committee on Finance which considered the House bill is also most informative in regard to the intent of Congress in enacting the law. The Senate report gives the reasons for the general provision on the application of State sales and use taxes to Federal enclaves as:

> Section 1 (a) of the committee amendment removes the exemption from sales or use taxes levied by a State, or any duly constituted taxing authority in a State, where the exemption is based solely on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area. At the present time exemption from such taxes is claimed on the ground that the Federal Government has exclusive jurisdiction over such areas. Such an exemption may be claimed in the following types of cases: First, where the seller's place of business is within the Federal area and a transaction occurs there, and, second, where the seller's place of business is outside the Federal area but delivery is made in Federal area and payment received there.

[46] S. Rept. No. 1625, 76th Cong., 3d Sess. 10429 (1940).

> This section will remove the right to claim an exemption because of the exclusive Federal jurisdiction over the area in both of these situations. The section will not affect any right to claim any exemption from such taxes on any ground other than that the Federal Government has exclusive jurisdiction over the area where the transaction occurred.
>
> This section also contains a provision granting the State or taxing authority full jurisdiction and power to levy and collect any such sale or use tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area. This additional authorization was deemed to be necessary so as to make it clear that the State or taxing authority had power to levy or collect any such tax in any Federal area within the State by the ordinary methods employed outside such areas, such as by judgment and execution thereof against any property of the judgment-debtor.

The provision relating to the application of State income taxes to persons residing within a Federal area or receiving income from transactions occurring on or services performed in a Federal area is explained in the Senate report on the rationale that:

> Section 2 (a) of the committee amendment removes the exemption from income taxes levied by a State, or any duly constituted taxing authority in a State, where the exemption is based solely on the ground that the taxpayer resides within a Federal area or receives his income from transactions occurring or services performed in such area. One of the reasons for removing the above exemption is because of an inequity which has arisen under the Public Salary Tax Act of 1939. Under that act a State is permitted to tax the compensation of officers and employees of the United States when such officers and employees reside or are domiciled

> in that State but is not permitted to tax the compensation of such officers and employees who reside within the Federal areas within such State. For example, a naval officer who is ordered to the Naval Academy for duty and is fortunate enough to have quarters assigned to him within the Naval Academy grounds is exempt from the Maryland income tax because the Naval Academy grounds are a Federal area over which the United States has exclusive jurisdiction; but his less fortunate colleague, who is also ordered there for duty and rents a house outside the academy grounds because no quarters are available inside, must pay the Maryland income tax on his Federal salary. Another reason for removing the above exemption, is that under the doctrine laid down in *James* v. *Dravo Contracting Co.* (302 U. S. 134, 1937), a State may tax the income or receipts from transactions occurring or services performed in an area within the State over which the United States and the State exercise concurrent jurisdiction but may not tax such income or receipts if the transactions occurred or the services were performed in an area within the State over which the United States has exclusive jurisdiction.

This section contains, for the same reasons, a similar provision to the one contained in section 1 granting the State or taxing authority full jurisdiction and power to levy and collect any such income tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

During the 1940 Senate hearings on the House bill, representatives of the War and Navy Departments expressed opposition to certain features of the bill. Vigorous attack was made on an aspect of the original bill which would have permitted the application of State sales taxes on retail sales of tangible personal property by post exchanges, ship-service stores and commissaries.[47] These objections were the apparent cause of an amendment which was explained by the Senate committee as follows:

> Section 3 of the committee amendment provides that sections 1 and 2 shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof. This section also provides that sections 1 and 2 shall not be deemed to authorize the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser. An authorized purchaser being a person who is permitted, under regulations of the Secretary of War or Navy, to make purchases from commissaries, ship's stores, or voluntary unincorporated organizations of Army or Navy personnel, such as post exchanges, but such person is deemed to be an authorized purchaser only with respect to such purchases and is not deemed to be an authorized purchaser within the meaning of this section when he makes purchases from organizations other than those heretofore mentioned.
>
> For example, tangible personal property purchased from a commissary or ship's store by an Army or naval officer or other person so permitted to make purchases from such commissary or ship's store, is exempt from the State sales or use tax since the commissary or ship's store is an instrumentality of the United States and the purchaser is an authorized purchaser. If voluntary unincorporated organizations of Army and Navy personnel, such as post exchanges, are held by the courts to be instrumentalities of the United States, the same rule will apply to similar purchases from such organizations;

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[47] Hearing before a Subcommittee of the Committee on Finance, United States Senate, 76th Cong., 3d Sess., on H. R. 6687 (Apr. 23, 1940), pp. 24, 28–31. See also letter from Representative Carl Vinson, *id.* pp. 47–48.

> but if they are held not to be such instrumentalities, property so purchased from them will be subject to the State sales or use tax in the same manner and to the same extent as if such purchase was made outside a Federal area. It may also be noted at this point that if a post exchange is not such an instrumentality, it will also be subject to the State income taxes by virtue of section 2 of the committee amendment.

It may be noted that post exchanges and certain other organizations attached to the armed forces have been judicially determined to be Federal instrumentalities.[48] It should also be noted that the exemption provision of the Buck Act was amended somewhat by the act of September 3, 1954, 68 Stat. 1227.

[48] In *Standard Oil Co.* v. *Johnson*, 316 U. S. 481 (1942), it was held (p. 485) that "post exchanges as now operated are arms of the Government deemed by it essential for the performance of governmental functions. They are integral parts of the War Department, share in fulfilling the duties entrusted to it, and partake of whatever immunities it may have under the Constitution and federal statutes." A similar holding in *United States* v. *Query*, 37 F. Supp. 972 (E. D. S. C., 1941), *aff'd.*, 121 F. 2d 631 (C. A. 4, 1941), *cert. den.*, 314 U. S. 685 (but see 316 U. S. 486), is applicable also to ships' stores and officers' and non-commissioned officers' clubs, because of a stipulation entered into in that case, according to a letter from the Secretary of the Navy to the Secretary of the Treasury dated Nov. 28, 1955 (see also: *Falls City Brewing Co.* v. *Reeves*, 40 F. Supp. 35 (W. D. Ky., 1941); *Edelstein* v. *South Post Officers Club*, 118 F. Supp. 40 (E. D. Va., 1951); *Maynard & Child, Inc.* v. *Shearer*, 290 S. W. 2d 790 (Ky., 1956); *Daniels* v. *Chanute Air Force Base Exchange*, 127 F. Supp. 920 (E. D. Ill., 1955); and *Roger* v. *Elrod*, 125 F. Supp. 62 (D. Alaska, 1954); *cf. Faleni* v. *United States*, 125 F. Supp. 630 (E. D. N. Y., 1949), and *Pan American Petroleum Corp.* v. *Alabama*, 67 F. 2d 590 (C. A. 5, 1933)). The Attorney General of Missouri has applied the decision in the *Standard Oil Co.* case, *Op. A. G., Mo.* (July 12, 1942), as has the Attorney General of Ohio, *Op. A. G., Ohio*, No. 3362 (1941), p. 17, and the Attorney General of Connecticut earlier applied the decision in the *Pan American Petroleum Corp.* case, *Op. A. G., Conn.* (Dec. 30, 1940). The Attorney General of Wyoming has ruled that the Army Motion Picture Service is exempt from State taxation as a Federal instrumentality. *Op. A. G., Wyo.* (July 8, 1947). The Judge Advocate General of the Navy has ruled that Navy commissaries similarly are Federal instrumentalities. *Op. J. A. G., Navy*, JAG: II: 1: JFG: w/n (Dec. 30, 1952).

One of the Navy officers testifying at the Senate hearing raised a question as to the effect on the Federal criminal jurisdiction over Federal areas of a grant to the States of concurrent jurisdiction for tax matters.[49] The Attorney General of the United States raised the same question in commenting on the bill by letter to the Chairman of the Senate Finance Committee:

> From the standpoint of the enforcement of the criminal law, the legislation may result in an embarrassment which is probably unintended. Criminal jurisdiction of the Federal courts is restricted to Federal reservations over which the Federal Government has exclusive jurisdiction, as well as to forts, magazines, arsenals, dockyards, or other needful buildings (U. S. C., title 18, sec. 451, par. 3d). A question would arise as to whether, by permitting the levy of sales and personal-property taxes on Federal reservations, the Federal Government has ceded back to the States its exclusive jurisdiction over Federal reservations and has retained only concurrent jurisdiction over such areas. The result may be the loss of Federal criminal jurisdiction over numerous reservations, which would be deplorable.[50]

After considerable discussion and deliberation the issue was resolved by a Senate committee amendment to the House bill adding the following provision (54 Stat., at p. 1060):

> Section 4. The provisions of this Act shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area.

The committee explained that:

[49] Hearing before a Subcommittee of the Committee on Finance, United States Senate, 76th Cong., 3d Sess., on H. R. 6687 (Apr. 23, 1940), pp. 24–25.
[50] *Id.* at p. 51.

> Section 4 of the committee amendment was inserted to make certain that the criminal jurisdiction of Federal courts with respect to Federal areas over which the United States exercises exclusive jurisdiction would not be affected by permitting the States to levy and collect sales, use, and income taxes within such areas. The provisions of this section are applicable to all Federal areas over which the United States exercises jurisdiction, including such areas as may be acquired after the date of enactment of this act.

The Buck Act added certain amendments to the Hayden-Cartwright (Lea) Act. The 1940 Senate committee report explained why those changes were considered necessary:

> Section 7 (a) of the committee amendment amends section 10 of the Hayden-Cartwright Act so that the authority granted to the States by such section 10 will more nearly conform to the authority granted to them under section 1 of this act. At the present time a State such as Illinois, which has a so-called gallonage tax on gasoline based upon the privilege of using the highways in that State, is prevented from levying such tax under the Hayden-Cartwright Act because it is not a tax upon the "sale" of gasoline. The amendments recommended by your committee will correct this obvious inequity and will permit the levying of any such tax which is levied "upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels."

By the Buck Act Congress took a great stride in the direction of removing the tax inequities which had resulted from the existence of Federal "islands" in the various States and, in addition, opened the way for the State and local governments to secure additional revenue.

In *Howard* v. *Commissioners*, 344 U. S. 624 (1953), the Supreme Court (by a divided court), expressed the view that the

Buck Act authorized State and local taxes measured by the income or earnings of any party "receiving income from transactions occurring or services performed in such area[51] * * * to the same extent and with the same effect as though such area was not a Federal area."[52] The Court of Appeals of Kentucky had held that this tax was not an "income tax" within the meaning of the Constitution of Kentucky but was a tax upon the privilege of working within the city of Louisville. The Supreme Court, after stating that the issue was not whether the tax in question was an income tax within the meaning of the Kentucky law, held that the tax in question was a tax "measured by, net income, gross income, or gross receipts," as authorized by the Buck Act. In a dissenting opinion, here quoted in pertinent part to clarify this important issue in this case, it was stated (p. 629):

> I have not been able to follow the argument that this tax is an "income tax" within the meaning of the Buck Act. It is by its terms a "license fee" levied on "the privilege" of engaging in certain activities. The tax is narrowly confined to salaries, wages, commissions and to the net profits of businesses, professions, and occupations. Many kinds of income are excluded, e. g., divi-

[51] The area involved in this case was a Government ordnance plant tract over which the United States exercised exclusive jurisdiction and which was annexed by the city without objection by the United States. The court held that notwithstanding the acquisition of the property by the United States with the consent of the State the area could be annexed by the city, since it remained a part of the county and State. To the same effect is the previous ruling in *Wichita Falls* v. *Bowen*, 143 Tex. 45, 182 S. W. 2d 695 (1944), where the court held that a military base over which the United States has exclusive jurisdiction is a part of the city, just as much as it is a part of the State, even though control over it is curtailed while under the jurisdiction of the United States; see also *County of Norfolk* v. *Portsmouth*, 186 Va. 1032, 45 S. E. 2d 136 (1947).

[52] The Judge Advocate General of the Army has had occasion to hold to the same general effect—that the failure of a State to reserve any rights to tax in its cession of jurisdiction to the United States has no effect on the right to tax under the Buck Act. *Op. J. A. G., Army*, 1953/9148 (Jan. 15, 1954), and *id.* 1944/1555 (Feb. 7, 1944).

dends, interest, capital gains. The exclusions emphasize that the tax is on the *privilege* of working or doing business in Louisville. That is the kind of a tax the Kentucky Court of Appeals held it to be. *Louisville* v. *Sebree,* 308 Ky. 420, 214 S. W. 2d 248. The Congress has not yet granted local authorities the right to tax the privilege of working for or doing business with the United States.

In another case in which a State claimed taxing authority under the Buck Act, a steel company which occupied a plant under lease from the Federal Government was thereby held subject to a State occupation tax under the act. *Carnegie-Illinois Steel Corp.* v. *Alderson,* 127 W. Va. 807, 34 S. E. 2d 737 (1945), *cert. den.,* 326 U. S. 764. It has also been held that a tax on gasoline received in a State, within a Federal area, was a "sales or use" tax within the purview of the act, and that by the act the Congress retroceded to States sufficient sovereignty over Federal areas within their territorial limits to enable them to levy and collect the taxes described in the act. *Davis* v. *Howard,* 306 Ky. 149, 206 S. W. 2d 467 (1947). In *Maynard & Child, Inc.* v. *Shearer,* 290 S. W. 2d 790 (Ky., 1956), it was held that an import tax was not such a tax as Congress had consented to be collected by its enactment of the Buck Act. In *Bowers* v. *Oklahoma Tax Commission,* 51 F. Supp. 652 (W. D. Okla., 1943), a construction contractor was held to "use" material incorporated into the work, so as to subject him to a State use tax pursuant to the Buck Act. The Attorney General of Wyoming has ruled that the State use tax was not applicable to an auto purchased out of the State for private use on an exclusive Federal jurisdiction area within the State. *Op. A. G., Wyo.* (Dec. 9, 1947).

There appear to be no other instances of general importance in which the character of State taxes as within the purview of the Buck Act has been questioned in the courts.[53]

[53] The Judge Advocate General of the Navy has ruled, however, that a license tax required by a State for the privilege of selling alcoholic beverages in a Federal area of exclusive jurisdiction is not a "sales or use tax" within the definition of the Buck Act, and the imposition of such a tax is not authorized. *Op. J. A. G., Navy,* JAG: II: JCR: ecw (June 22, 1950).

The Chief Counsel of the National Park Service has ruled that State and county privilege taxes are inapplicable to a concessionaire on an exclusive Federal jurisdiction area in Tennessee, on the ground that such taxes are not within the purview of existing congressional authorization. *Memo* dated Jan. 20, 1954, to Regional Director, Region 1, Nat'l Park Service, Dept. of Interior. The Attorney General of Utah has held that a corporation doing business as a restaurant on an area under exclusive Federal jurisdiction is subject to State sales, use, and income taxes. *Op. A. G., Utah,* No. 51-163. The Attorney General of California has held that under the Buck Act sales by operators, who are not Federal instrumentalities, of vending stands within Federal enclaves are subject to sales taxes. *Op. A. G., Cal.,* No. NS3156 (Dec. 21, 1940). So also subject are sales of liquor consummated by delivery within the enclave. *Id.* NS3578 (June 12, 1941).

An early, and leading, case relating to the effect of the Buck Act on State taxing authority is *Kiker* v. *Philadelphia,* 346 Pa. 624, 31 A. 2d 289 (1943), *cert. den.,* 320 U. S. 741.[54] In that case there was interposed as a defense against application of an income tax of the city of Philadelphia, to a non-resident of the city employed in an area within the city limits but under the exclusive legislative jurisdiction of the United States, the fact that the non-resident received no *quid pro quo* for the tax. The court found the availability of services to be an answer to this defense. The court also appears to have overcome any difficulty, and in these matters its views apparently are sustained by the *Howard* case, *supra,* and other decisions, in objections raised to the application of the tax in a vigorous dissenting opinion in this case that (1) the city, as distinguished from the State, could not impose a tax under the Buck Act, and (2) that a State grant to the Federal Government of legislative jurisdiction over an area placed such area outside the sovereignty (and individuals and property within the area beyond the taxing power) of the State.

Military Leasing Act of 1947.—The Wherry Housing Act of

[54] See 17 *Temple U. L. Q.* 275 (1943) for a note on this case. The case was followed in *Philadelphia* v. *Cline,* 158 Pa. Super. Ct. 179, 44 A. 2d 610 (1945), *cert. den.,* 328 U. S. 848.

1949,[55] in pertinent part, makes provision for arrangements whereby military areas (including, of course, such areas under the exclusive legislative jurisdiction of the United States) may be leased to private individuals for the construction of housing for rental to military personnel. The authority to lease out military areas for the construction of such housing was supplied by the Military Leasing Act of 1947,[56] a provision of which (section 6) read as follows:

> The lessee's interest, made or created pursuant to the provisions of this Act, shall be made subject to State or local taxation. Any lease of property authorized under the provisions of this Act shall contain a provision that if and to the extent that such property is made taxable by State and local governments by Act of Congress, in such event the terms of such lease shall be renegotiated.

The legislative histories of both the 1947 and the 1949 statutes are devoid of authoritative information for measuring the extent of the taxing authority granted to the States, with the result that ambiguities in the language of the statutes which shortly became apparent led to a number of conflicting court decisions,[57] and other at least seemingly inconsistent interpre-

[55] Act of Aug. 8, 1949, 63 Stat. 576, as amended, 12 U. S. C. 1748.

[56] Act of Aug. 5, 1947, 61 Stat. 774, 10 U. S. C. 1270 (d), the pertinent provision of which appears, in revised form, as section 2667 (e) of title 10, U. S. C., as recodified in 1956.

[57] *Gay* v. *Jemison*, 52 So. 2d 137 (Fla., 1951); *Tampa Bay Garden Apartments* v. *Gay*, 55 So. 2d 739 (Fla., 1951); *Squantum Gardens* v. *Assessors of Quincy*, 140 N. E. 2d 482 (Mass., 1957); *Meade Heights* v. *State Tax Commission*, 202 Md. 20, 95 A. 2d 280 (1953); *Bragg Development Co.* v. *Braxton*, 239 N. C. 427, 79 S. E. 2d 918 (1954); *Dayton Development Fort Hamilton Corp.* v. *Boyland*, 133 N. Y. S. 2d 831 (Sup. Ct., 1954) *aff'd.*, 1 App. Div. 2d 979, 151 N. Y. S. 2d 928, *app. pending*, 137 N. E. 2d 457 (1956); *Conley Housing Corp.* v. *Coleman*, 211 Ga. 835, 89 S. E. 2d 482 (1955); *De Luz Homes, Inc.* v. *County of San Diego*, 45 Cal. 2d 546, 290 P. 2d 544 (1955); *Fairfield Gardens* v. *County of Solano*, 45 Cal. 2d 575, 290 P. 2d 562 (1955); *Victor Valley Housing Corp.* v. *County of San Bernardino*, 45 Cal. 2d 580, 290 P. 2d 565 (1955); *El Toro Dev. Co.* v. *County of Orange*, 45 Cal. 2d 586, 290 P. 2d 569 (1955); *County of Prince William* v. *Thomason Park*, 197 Va. 861, 91 S. E. 2d 441 (1956).

tations.[58] The ambiguity as to whether the federally granted tax authority with respect to leasehold interests extended to such interests located on lands under the exclusive legislative jurisdiction of the United States was resolved, however, by the decision of the Supreme Court of the United States in the case of *Offutt Housing Company* v. *Sarpy County*, 351 U. S. 253 (1956).[59] The court stated (p. 259):

> * * * To be sure, the 1947 Act does not refer specifically to property in an area subject to the power of "exclusive Legislation" by Congress. It does, however, govern the leasing of Government property generally and its permission to tax extends generally to all lessees' interests created by virtue of the Act. The legislative history indicates a concern about loss of revenue to the States and a desire to prevent unfairness toward competitors of the private interests that might otherwise escape taxation. While the latter consideration is not necessarily applicable where military housing is involved, the former is equally relevant to leases for military housing as for any other purpose.
>
> We do not say that this is the only admissible construction of these Acts. We could regard Art. I, § 8, cl. 17 as of such overriding and comprehensive scope that consent by Congress to state taxation of obviously valuable private interests located in an area subject to the power of "exclusive Legislation" is to be found only in explicit

[58] Opinions of State Attorneys General on this subject are complicated by variations in State statutes defining properties on which taxes may be levied. Held that Wherry housing was subject to taxation under pertinent State statute: *Op. A. G., Ill.*, p. 78, No. 23 (May 7, 1953); *Op. A. G., Kan.* (Feb. 7, 1952); *Op. A. G., Utah*, No. 52–079; *id.* No. 53–178; *id.* No. 55–035; such housing held not subject to taxation: *Op. A. G., Conn.* (Oct. 15, 1952); *Op. A. G., Ind.*, No. 37 (1952), p. 163; *Op. A. G., N. Mex.*, No. 5463 (Dec. 10, 1951); *Op. Asst. A. G., Wyo.* (Sept. 29, 1955).

[59] See also *Fort Dix Apartments Corp.* v. *Borough of Wrightstown*, 225 F. 2d 473 (C. A. 3, 1955), *cert. den.*, 351 U. S. 962; *Brookley Manor* v. *State*, 90 So. 2d 161 (Ala., 1956); *Bragg Investment Co.* v. *Cumberland County*, 245 N. C. 492, 96 S. E. 2d 341 (1957).

> and unambiguous legislative enactment. We have not heretofore so regarded it, see *S. R. A., Inc.* v. *Minnesota*. 327 U. S. 558; *Baltimore Shipbuilding Co.* v. *Baltimore*, 195 U. S. 375, nor are we constrained by reason to treat this exercise by Congress of the "exclusive Legislation" power and the manner of construing it any differently from any other exercise by Congress of that power. This is one of those cases in which Congress has seen fit not to express itself unequivocally. It has preferred to use general language and thereby requires the judiciary to apply this general language to a specific problem. To that end we must resort to whatever aids to interpretation the legislation in its entirety and its history provide. Charged as we are with this function, we have concluded that the more persuasive construction of the statute, however flickering and feeble the light afforded for extracting its meaning, is that the States were to be permitted to tax private interests, like those of this petitioner, in housing projects located on areas subject to the federal power of "exclusive Legislation." We do not hold that Congress has relinquished this power over these areas. We hold only that Congress, in the exercise of this power, has permitted such state taxation as is involved in the present case.

The opinion of the Supreme Court in the *Offutt* case, it seems clear, was restricted to an interpretation of the statutes involved, with particular reference to the language of the 1947 statute. Otherwise, it may be noted, in the light of the quoted portion of the opinion any Federal statute authorizing a State to exercise power previously denied to it might be construed, in the absence of indication of a positive contrary legislative intent, as authorizing the exercise of such power not only outside of areas under exclusive Federal legislative jurisdiction, but also within such areas. Under this construction the States need not have awaited the enactment of the Buck Act before taxing the income of Federal employees in areas under exclusive Federal legislative jurisdiction, since Congress had previously authorized State taxation of incomes of Federal employees generally.

Workmen's compensation.—In 1936 there was enacted a statute [60] permitting the application of State workmen's compensation laws to Federal areas. Both House and Senate reports [61] on the bill contained concise explanatory remarks concerning the reasons for the act. The House report, the more extensive of the two, sets forth the circumstances which motivated congressional action. The pertinent portions of the report are:

> The Committee on Labor, to whom was referred the bill (H. R. 12599) to provide more adequate protection to workmen and laborers on projects, buildings, constructions, improvements, and property wherever situated, belonging to the United States of America, by granting to the several States jurisdiction and authority to enter upon and enforce their State workmen's compensation, safety, and insurance laws on all property and premises belonging to the United States of America, having had the bill under consideration, report it back to the House with a recommendation that it do pass.
>
> This bill is absolutely necessary so that protection can be given to men employed on projects as set out in the foregoing paragraph.
>
> As a specific example, the Golden Gate Bridge, now under construction at San Francisco, which is being financed by a district consisting of several counties of the State of California, the men are almost constantly working on property belonging to the Federal Government either on the Presidio Military Reservation on

[60] Act of June 25, 1936, 49 Stat. 1938, 40 U. S. C. 290.

[61] H. Rept. No. 2656, 74th Cong., 2nd Sess. 9994 (1936); S. Rept. No. 2294, 74th Cong., 2nd Sess. 9989 (1936).

> the San Francisco side of the Golden Gate, or the Fort Baker Military Reservation on the Marin County side of the Golden Gate.
>
> A number of injuries have occurred on this project and private insurance companies with whom compensation insurance has been placed by the contractors have recently discovered two decisions—one by the Supreme Court of the United States and one by the Supreme Court of California—which seem to hold that the State Compensation Insurance Acts do not apply, leaving the workers wholly unprotected, except for their common-law right of action for personal injuries which would necessitate action being brought in the Federal courts. In many cases objection to the jurisdiction of the industrial accident commission has been raised over 1 year after the injury occurred and after the statute of limitations has run against a cause of action for personal injuries. This status of the law has made it possible for the compensation insurance companies to negotiate settlement with the workers on a basis far below what they would ordinarily be entitled. The situation existing in this locality is merely an example of the condition that exists throughout the United States wherever work is being performed on Federal property.

The Senate report very briefly states the problem in these words:

> The purpose of the amended bill is to fill a conspicuous gap in the workmen's compensation field by furnishing protection against death or disability to laborers and mechanics employed by contractors or other persons on Federal property. The United States Employees' Compensation Act covers only persons directly employed by the Federal Government.
>
> There is no general Federal statute applying the work-

> men's compensation principle to laborers and mechanics on Federal projects, and although the right of workmen to recover under State compensation laws for death or disability sustained on Federal property has been recognized by some of the courts, a recent decision of the United States Supreme Court (see *Murray* v. *Gerrick*, 291 U. S. 315), has thrown some doubts upon the validity of these decisions by holding that a Federal statute giving a right of recovery under State law to persons injured or killed on Federal property refers merely to actions at law. Hence, it was held that this statute (act of Feb. 1, 1928, 45 Stat. 54, U. S. C., ti. 16, sec. 457) did not extend State workmen's compensation acts to places exclusively within the jurisdiction of the Federal Government.

The bill, as passed by the House, contained provisions subjecting Federal property to State safety and insurance regulations and permitting State officers to enter Federal property for certain purposes in connection with the act. The Senate committee suggested changes and deletions in these provisions which were approved by the Senate. The House concurred [62] in the amendments, with no objections and with only a general explanation of their purpose [63] prior to such action.

While in some few instances State workmen's compensation laws had been held applicable in exclusive Federal jurisdiction areas under a 1928 Federal statute or under the international law rule,[64] the case of *Murray* v. *Gerrick & Co.*, 291 U. S. 315 (1934), it was noted in the legislative reports on this subject, held workmen's compensation laws inapplicable in such areas.

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[62] 80 Cong. Rec. 9180–1, 9643 (1936).

[63] *Id.* at p. 8842.

[64] See p. 148 *et seq.*, *supra*. In *Alexander* v. *Movietonews, Inc.*, 273 N. Y. 511, 6 N. E. 2d 604 (1937), *cert. den.*, 301 U. S. 702; *Loney* v. *State Industrial Accident Board*, 87 Mont. 191, 286 Pac. 408 (1930); *Lynch's Case*, 281 Mass. 454, 183 N. E. 834 (1933); *Seerman* v. *Lustig & Weil, Inc.*, 252 App. Div. 906, 299 N. Y. Supp. 920 (1937); and *Walsh* v. *Apartment Engineering & Contracting Co.*, 267 N. Y. Supp. 872 (App. Div., 3d Dept., 1933), State workmen's compensation laws were held applicable to injuries suffered on exclusive Federal jurisdiction areas because of a nexus between

The 1936 Federal statute authorized States to apply their workmen's compensation laws in these areas, but required legislative action by the States for accomplishment of this purpose; [65] however, where a State had an appropriate law already in effect, but held in abeyance in an area because of Federal possession of legislative jurisdiction over the area, Federal enactment of this statute activated the State law without the necessity of any action by the State. *Capetola* v. *Barclay White Co.*, 139 F. 2d 556 (C. A. 3, 1943), *cert. den.*, 321 U. S. 799.[66] The statute was not applicable to causes of action arising before its passage, however.[67] State workmen's compensation laws are authorized by this statute to be applied to employees of contractors engaged in work for the Federal Government.[68] The statute does not, however, permit application of State laws to persons covered by provisions of the Federal Employees' Compensation Law,[69] or, it has been held, to employees of Federal instrumentalities.[70]

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the State and the contract of employment or parties to the contract. In *Allen* v. *Ind. Acc. Com.*, 3 *Cal.* 2d 214, 43 P. 2d 787 (1935), *Hand* v. *Apartment Engineering & Construction Co., Inc.*, 246 App. Div. 874, 285 N. Y. Supp. 67 (1936), and *Employers' Liability Assur. Corp.* v. *DiLeo*, 298 Mass. 401, 10 N. E. 2d 251 (1937), application of a State statute to an exclusive Federal jurisdiction area was denied. It should be noted that such application, notwithstanding existence of a nexus, substitutes State law for a remedy otherwise available under Federal law. However, the Supreme Court has given approval to such extraterritorial application of State workmen's compensation laws. *Alaska Packers Assn.* v. *Comm'n.*, 294 U. S. 532 (1935); *Steinmetz* v. *Snead & Co.*, 123 N. J. L. 497, 9 A. 2d 801 (1939), *aff'd.*, 311 U. S. 605. See also 8 *So. Calif. L. Rev.* 61 (1935).

[65] See *State* v. *Rainier Nat'l Park Co.*, 192 Wash. 592, 74 P. 2d 464 (1937).

[66] See also *Ottinger Bros.* v. *Clark*, 191 Okla. 488, 131 P. 2d 94 (1942); *McDonnell & Murphy* v. *Lunday*, 191 Okla. 611, 132 P. 2d 322 (1942); 12 *Geo. Wash. L. Rev.* 80 (1943).

[67] *Employers' Liability Assur. Corp.* v. *DiLeo*, 298 Mass. 401, 10 N. E. 2d 251 (1937).

[68] *Young* v. *G. L. Tarlton, Contractor, Inc.*, 204 Ark. 283, 162 S. W. 2d 477 (1942).

[69] *Breeding* v. *Tennessee Valley Authority*, 243 Ala. 240, 9 So. 2d 6 (1942); *Posey* v. *Tennessee Valley Authority*, 93 F. 2d 726 (C. A. 5, 1937).

[70] *Op. J. A. G., Navy*, P3-2/P7 (350924-5), (May 18, 1938); *Ops. J. A. G., Army*, 1949/8889 (Feb. 15, 1950); 1949/5319 (Aug. 3, 1949); 1944/6234 (July 5, 1944).

Unemployment compensation.—The provision for application of State unemployment compensation laws in Federal areas was enacted as a portion of the Social Security Act Amendments of 1939: [71]

> No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

The provision probably was born out of litigation, then pending in Arkansas courts, wherein the United States Supreme Court later upheld imposition of a State unemployment compensation tax upon a person operating in an area under Federal legislative jurisdiction only upon the basis of jurisdiction to tax property retroceded to or reserved by the State with respect to such area. *Buckstaff Bath House Co.* v. *McKinley*, 308 U. S. 358 (1939). Other provisions require certain Federal instrumentalities to comply with State unemployment compensation laws.

An example of the paucity of information as to Congressional intent and purpose in the provisions of the Social Security Act Amendments of 1939 effecting retrocession of jurisdiction is the brief statement in the House report [72] on this section:

> Subsection (d) authorizes the States to cover under their unemployment compensation laws services performed upon land held by the Federal Government, such as services for hotels located in national parks.

The Senate report [73] is identical. Although extensive hear-

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[71] Act of Aug. 10, 1939, 53 Stat. 1392, 26 U. S. C. 3305 (formerly 1606), (d).

[72] H. Rept. No. 728, 76th Cong., 1st Sess. 10298 (1939) (p. 72).

[73] S. Rept. No. 734, 76th Cong., 1st Sess. 10294 (1939).

ings[74] covering some 2,500 pages were held on the bill, very few references were made to the purpose of this particular section. The provision was inserted on the recommendation of the Social Security Board in its written report to the President of the United States.[75] During the latter stages of the hearings the Chairman of the Social Security Board explained that:

> Item 8: We suggest that the States be authorized to make their unemployment compensation laws applicable to persons employed upon land held by the Federal Government, such as employees of the hotels in the National Parks. That is the same policy that the Congress has pursued in the past, in making all workmen's compensation laws applicable to such employees, such as the employees of concessionaires in the National Parks and on other Federal properties.[76]

This quotation indicates that the provision was included "to fill a conspicuous gap" in the unemployment compensation field. As it had done before, Congress followed a precedent. Here that precedent was the statute dealing with the application of workmen's compensation laws to Federal enclaves. Coverage was broadened apparently on the basis that if State social security legislation was at all worthy it should protect as many people as possible.

Under this statute, it has been held, a Government contractor is required to make State unemployment insurance contributions with respect to persons employed by him on an area over which the United States exercises exclusive legislative jurisdiction.[77] And post exchanges, ships' service stores, officers' messes and similar entities are required to pay the unemployment taxes, it has been held,[78] although they are Government instrumentalities,[79] on the ground that they do not come within an exception for "wholly owned" instrumentalities.

[74] Hearings before Committee on Ways and Means, House of Representatives, 76th Cong., 1st Sess. (Feb., Mar., and Apr., 1939).

[75] *Id.* at p. 14.

[76] *Id.* at p. 2376.

[77] *Op. J. A. G., Army*, 1943/4064 (Mar. 29, 1943).

[78] *Op. J. A. G., Navy* L14-1/LG-2 (411205), (Feb. 3, 1942); *id.* NPI/N4-5 (4111114), (Jan. 29, 1942).

[79] See footnote 48 (p. 198), *supra*.