

## Topic 2: What Makes a Tax Legal?

# 1. WHAT GIVES ANYONE THE RIGHT TO TAX ME?

**Essential Dilemma: What gives anyone (or anything) the right to tax?**

Ok, ok, I see that government does some good and that taxes are the best way to get that money, but--



Jayden

Always a “but”!



Carlos

BUT, maybe the government is doing too much and there are too many taxes. Can the government just tax as much as it wants and any old way it wants to?  
In fact, can I impose a tax on Carlos for interrupting me?



Jayden



**Ms. Lerner**  
(teacher)

No Jayden, you can't tax Carlos—only governments can enact taxes. Your other questions, however, are good ones. The more taxes a government has, the more it can do and that may not be good. It's possible that the government is doing too much, or too little, or not the right things. It's up to citizens, through their elected legislatures, to decide exactly how big they want government to be and what it should do. However, even a small government whose only function is to defend the country against foreign enemies needs money to defend the country.

Ok, we already learned all about the legislative branch of government. What I need to know now is just what a tax is.



**Maria**

Taxes, or levies as they are sometimes called, pay for the general operation of government. Governments can also charge fees, but fees are usually just for a particular benefit or service—like a fishing license. The amount of a fee is usually determined by the cost of providing the particular good or service but the amount of a tax helps cover the general costs of running many government programs.



**Ms. Lerner**

A tax is not voluntary, but is compulsory or mandatory. Everyone who is subject to it must pay it. If a person who owes a tax doesn't pay it, he or she will have to pay a penalty, and may even go to jail.

I'm confused. My dad **gets** money from taxes; he doesn't pay them.



**Briana**

You're right. A person can get money through the tax system—like through the earned income tax credit. Remember, however, that person is still paying other kinds of taxes to the government.



**Ms. Lerner**

Ok, I get that people can get money and pay money through the tax system. What I'm still confused about is just what government you are talking about. Do you mean the city government? Do you mean the state government? Or do you mean the national or federal government in Washington?



**Maria**



**Ms. Lerner**

Another good question. Those are all different levels of government: federal, national, state, city and even other local governments (like parishes or counties). Each can tax. BUT: What and how a government can tax depends on what legal power it has to tax.

So Congress decides what can be taxed?



**Jayden**



**Ms. Lerner**

Yes and no.

*Everybody groans*



**Ms. Lerner**

Do you like "it depends" better?

It depends.



**Jayden**

Just tell us already!



**Maria**



**Ms. Lerner**

Ok, I'll start with Congress. It creates tax laws that apply to everyone in the country—like an income tax. But it doesn't make tax laws for just one state or city. Even when it is creating laws for the whole country, it can't do whatever it wants. The U.S. constitution limits Congress's power or authority.

For example, it gives the federal government power to tax gasoline, but it also says that the tax must be the same in all the states. In other words, the federal government can't have a tax of 18¢ per gallon in Louisiana and 20¢ in New York.

Wait a minute that can't be true! When we drove my sister to college we went through several states and the gas cost a different amount in each state.



**Briana**

That has nothing to do with taxes. I pay less for gas if I get gas at the station near the mall instead of the one near my house. That's the law of supply and demand!



**Maria**



**Ms. Lerner**

Well, yes and no.

You mean "It depends?"



**Jayden**



Ms. Lerner

I do! The amount you pay for a gallon of gas includes both the price the gas station charges you for the gas and the tax. The price of the gas is determined by the market—the economic rules of supply and demand set the price. And that price can vary from location to location. The government sets the amount of the tax and that is a set amount—not dependent on supply and demand.

So the tax has to be the same in the whole country—and the reason I pay different prices is simply an economic one—some people are willing to pay more for the gas than others?



Jayden



Ms. Lerner

Well, yes and no!

*Everybody groans again*



Ms. Lerner

The federal tax is the same throughout the country (it's a little over 18¢ a gallon—more for diesel fuel), but states can also tax gasoline. So part of the difference in what you pay in different states is due to taxes, not just supply and demand.

Wait just a minute! You mean the state **and** the federal government can both tax me on the same thing?



Briana



**Ms. Lerner**

Yes and no.



**Jayden**

Here we go again.



**Ms. Lerner**

Remember that governments at every level—federal, state, and local—may have the power to tax and the extent of that power is defined and limited by the constitution and laws at that level. Federal laws apply throughout the United States, but state and local laws vary. Some state constitutions—Louisiana, Massachusetts, and New York, for example—give the state the authority to tax individuals on their income. A few, however—like Florida and Washington—do not. Although. . . .



**Briana**

Wait a minute! Why don't all the people living in states that have income taxes—like New York—just up and move to Florida? By saving all that tax, they'd be richer.



**Carlos**

And warmer!



Ms. Lerner

Well, some might do that, but they might not be richer. Maybe they can't get jobs in Florida, or maybe they don't want to leave friends and relatives. It's comp...

(together)  
IT'S COMPLICATED!



Carlos



Maria



Jayden



Briana



Ms. Lerner

And it gets even more complicated. There are levels of governments smaller than states—cities, towns, counties—and their taxing powers depend on their state constitutions. Only a few state constitutions give cities (or other “political subdivisions” like counties and parishes) the power to tax income, most do not. All of the constitutions, however, do give cities and political subdivisions the power to tax other things like sales or property.

So if both the state and the federal governments have the power to tax gas (which they do) both can do it. The federal gas tax has to be the same throughout the United States, but each state can pass its own gas tax law and have different rates. Massachusetts, for example, has gas taxes totaling  $23\frac{1}{2}\text{¢}$  but Louisiana's are only  $20\text{¢}$ . And that is part of the reason Briana saw a different price for gas. (The other part being the supply and demand for gas in the different places.)

(together)  
OK, I get it now!



Carlos



Briana



**Ms. Lerner**

Wait, there's more!

*(muttering)*

Why am I not surprised?



**Jayden**



**Ms. Lerner**

Do you have something to say, Jayden?

*(Jayden shakes his head no. Ms. Lerner continues)*

Even when a government has the power to tax, it still has to follow rules about how it passes taxes, just like when it passes any other law—or else they aren't legal.

Sometimes there are even special rules for taxes. Carlos, do you know what percent of votes a tax bill needs to pass in Louisiana?

Um, um...



**Carlos**



**Ms. Lerner**

*(throwing a piece of crumpled paper at Carlos to catch)*

Open the piece of paper.

Huh?



Carlos



Ms. Lerner

Please read it aloud.

*(opening it and reading)*

Two-thirds.



Carlos



Ms. Lerner

That's right. The majority of states require only a majority vote in each house of the legislature to pass or increase a tax. Louisiana, however, like a few other states requires a supermajority to pass a tax. The amount varies from state to state. In Delaware, New York and Oregon, for example, the amount needed is three-fifths (60%) but in LA and CA it is two-thirds, or 66.666%.

Well, a supermajority certainly makes it harder to pass a tax. So that would help keep taxes down.



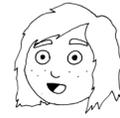
Jayden

Yeah, but maybe the supermajority makes it too hard to tax, and the government can't pass enough taxes to fund things that everyone wants—like fixing the potholes.



Carlos

Well, that's all very nice, but who can understand what those laws say?



**Briana**

And how is all that money going to get collected?



**Maria**

And what if I don't want to pay, who's going to make me?



**Carlos**

At the federal level, the IRS does all that.

(Briana yawns)



**Ms. Lerner**

No, Briana, IRS doesn't stand for I'm Really Sleepy.  
The initials mean Internal Revenue Service.

The IRS doesn't make tax laws—Congress does. It just administers  
the law—interprets it, collects the taxes and so forth.

It's the same at other levels of government: legislatures make the  
laws and agencies administer them.

## Dilemma

The storm last weekend was really bad. The flooding damaged many roads, homes and buildings—including the school. It turns out that the storm sewers are too old, small, and leaky to work well. Experts determine that the flooding will get worse unless big new sewers are installed. That's going to be expensive.

## Task

City Council wants to pass a tax to pay for repairs, but they are a little hazy about taxes (they were all just elected and never took Ms. Lerner's class). They need some background information and Ms. Lerner has volunteered your class to provide that information. The Councilors want to know:

1. Can the city have an income tax? How would you find out if it is legal for the city to have an income tax and what has to be done to get one?

2. If the city can't tax income, can the state and/or federal government impose an income tax? How would you figure that out?

3 Assume the city can impose any kind of tax it wants. Please list 2 taxes they could impose.

4 If 55% of city councilors vote for the tax, will it pass? Why or why not?