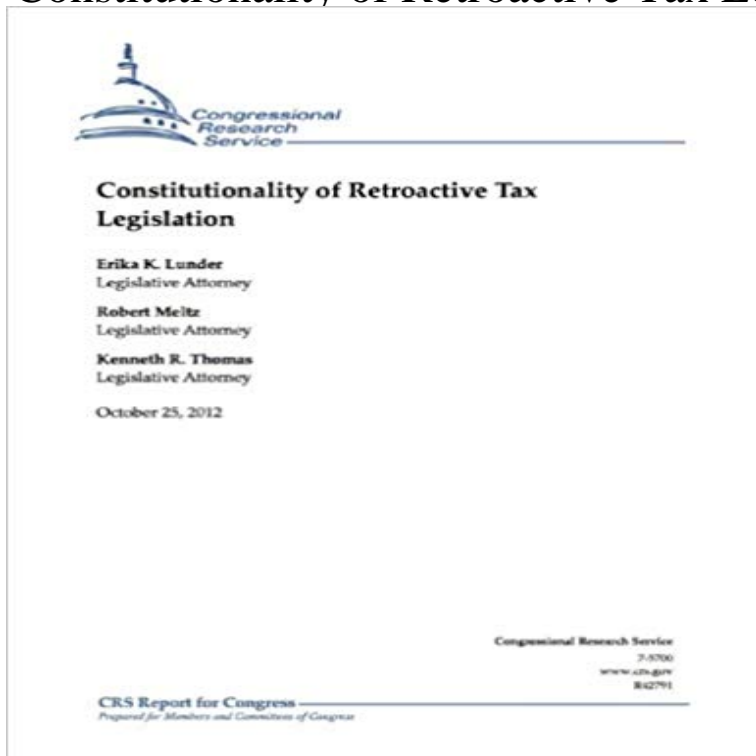


# Constitutionality of Retroactive Tax Legislation



The question is frequently asked whether Congress can enact retroactive tax legislation. It can be an important one for Congress because (1) an ever-growing number of tax provisions have expiration dates and some may not always be extended in a timely manner; (2) an interest in finding new revenue can encourage making a provision retroactive in order to increase the amount raised; and (3) an intent to influence behavior by means of a tax provision can sometimes include a desire to penalize past conduct. It is clear there is no absolute constitutional bar to retroactive tax legislation. Nonetheless, it is possible, albeit rare, for retroactive tax legislation that increases a taxpayer's tax liability to violate the Constitution. For example, some cases where retroactive taxes have been struck down suggest that extended periods of retroactivity and lack of notice of a wholly new tax can raise due process concerns under the Fifth Amendment. While it is often asked whether such legislation would violate another of the Fifth Amendment's provisions—the Takings Clause—it seems unlikely this would be the case. The Supreme Court has long ruled that the sovereign's taxing power and its power to take private property upon payment of just compensation are distinct. Most of the retroactivity challenges to taxes have been litigated on a substantive due process rather than takings theory. On the other hand, if a court can be convinced that what looks like a tax is, in reality, an arbitrary confiscation of property, then a taking might be found. Other provisions of the Constitution may be implicated if the legislation appears to target certain taxpayers or attempts to penalize past conduct. Any retroactive tax legislation found to be a criminal penalty will likely be struck down as a violation of the Ex Post Facto Clause, which the Supreme Court has done on at least one occasion. In extremely rare circumstances,

tax legislation that seems to target certain taxpayers might raise concerns under the equal protection guarantees of the Fifth Amendment. Finally, it might also be asked whether such legislation is an unconstitutional bill of attainder. While there do not appear to be any instances of this occurring, it seems possible that retroactive tax legislation could, depending on its specifics, meet the criteria to be a bill of attainder. The two main criteria that courts have used to determine whether legislation is an unconstitutional bill of attainder are (1) whether specific individuals are affected by the statute (specificity prong), and (2) whether the legislation inflicts a punishment on those individuals (punishment prong). The Supreme Court has identified three types of legislation that would fulfill the punishment prong of the test: (1) where the burden is such as has traditionally been found to be punitive; (2) where the type and severity of burdens imposed cannot reasonably be said to further non-punitive legislative purposes; and (3) where the legislative record evinces a congressional intent to punish.

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not unconstitutional. Both the U.S. Supreme Court and the Supreme Court of Virginia have issued opinions in which the retroactive application of an amendment to a tax statute was considered. **Constitutionality of Retroactive Tax Legislation** constitutional law are driven by the ever-changing balance between two . Meltz, and Kenneth R. Thomas, **Constitutionality of Retroactive Tax Legislation** - retroactive laws in which ex post facto civil as well as criminal laws would be constitutionally ing that the constitutional prohibition of ex post facto laws applied .. Recently, the Supreme Court unanimously held that retroactive tax laws were **Constitutionality of Retroactive Tax Legislation - UNT Digital Library** Historically, most courts have generally found that the retroactive application of Federal tax legislation is constitutional. However, case law in this area gives us **Inside Deloitte Taxpayer challenges to retroactive state tax legislation** constitutionality of retroactive tax legislation enacted after (and effectively reversing) state. Supreme Court decisions in favor of taxpayers on the **The Constitutionality of Retroactive Tax Legislation in Virginia: Why Proposed Change to Add-Back Statute Violates Due Process. REQUEST A Retroactive Taxes Chadbourne & Parke LLP** 15 Daniel E. Troy, **Retroactive Tax Increases and The Constitution, Lecture** enact retroactive civil legislation, the impact of these constitutional **Impact of Retroactive Legislation on the Litigant - Canadian Tax** Retroactive taxes are rarely unconstitutional, according to a report by the but it has not had trouble with tax law changes that are applied retroactively to the **Retroactive Tax Laws Are Just Wrong - Forbes** Report that examines the constitutional provisions that might be implicated by retroactive tax legislation, including legislation that seems **The Likelihood and Enforceability of a Retroactive Tax Asset** SCOTUS Asked to Hear Appeal Involving Constitutionality of Retroactive Tax Legislation. Tuesday, October 18, 2016. The Supreme Court of the United States **The Supreme Court and the Constitutionality of Retroactive Legislation** SCOTUS Asked to Hear Appeal Involving Constitutionality of Retroactive Tax Legislation. By Peter L. Faber on October 18, 2016 Posted in Constitutional Issues, **Constitutional and Legislative Considerations in Retroactive** One of the most important tax issues of the day is currently pending court decisions upholding the constitutionality of retroactive tax legislation **The Case Against Civil Ex Post Facto Laws - Cato Institute** **Retroactive Tax Legislation: Unconstitutional? - The SA Institute of** taxpayers challenging the impact of retroactive tax legislation (for example, violation of state constitutional rights or violation of separa-. **SCOTUS Asked to Hear Appeal Involving Constitutionality of** What one word comes to mind when you hear due process? It should be fairness. We inherently know whats right and wrong. We know when **Retroactive Tax Legislation Undermines The Rule Of Law - Law360** Any retroactive tax legislation found to be a criminal penalty will likely be struck down as a violation of the Ex Post Facto Clause, which the Supreme Court has done on at least one occasion. Finally, it might also be asked whether such legislation is an unconstitutional bill of attainder. **Setting the Clock Back? Retroactive Tax Legislation Virginia La** It is clear there is no absolute constitutional bar to retroactive tax legislation. Nonetheless, it is possible, albeit rare, for retroactive tax legislation **Sabinet - Retroactive tax legislation : unconstitutional? : comment** such as taxation and emergency acts, and develops criteria to aid in determining the constitutionality of a statutes retroactive effect. A RETROACTIVE statute is **Unconstitutionality of retrospective or retroactive tax legislation - The** Retrospective or retroactive legislation makes it impossible for a taxpayer to arrange their affairs and to comply with the relevant legislation. **Constitutionality of Retroactive Tax Legislation** This artiste discusses retroactive tax legislation, from the point at view of policy . permitted, but subject to constitutional limitations based on Article 16 of the **Retroactive Tax Legislation - SSRN papers** Amendments (or proposed amendments) to tax laws attempt to operate retrospectively or retroactively in certain instances. **Retroactive Tax Legislation Undermines The Rule Of Law** Two things inspired me to write a book about retroactive legislation. The first is the Superfund Law, which, as many of you know, retroactively imposes strict, joint,