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SUMMARY

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Congressional Rules and Practices Concerning User Fees and Other Nonrevenue Collections in the Federal Budget

The collection of funds to finance the operations of the federal government is a fundamental part of federal budgeting and the policymaking process. Although the power to "lay and collect taxes, duties, imposts, and excises" is one of the enumerated powers of Congress under the Constitution, not all of the receipts of the federal government actually result from this authority. Federal receipts may also result from various voluntary or business transactions of individuals with the government. Receipts collected as a consequence of the taxing power, including tariffs, are considered revenues in a constitutional sense and are subject to a number of specific rules and requirements. Receipts from voluntary or business transactions can be distinguished from revenues in a constitutional sense. As a consequence, they are not subject to those rules and requirements that apply to revenues but are subject to other rules and requirements.

Nonrevenue collections include many user, regulatory, and other fees, charges, and assessments levied on a class of payors that directly avail themselves of, or are directly subject to, a governmental service, program, or activity. Nonrevenue collections also include rents and royalties paid to the federal government and proceeds from the sale of federal assets, because the purchase is voluntary and the payors receive something of commensurate value for their payments. Civil and criminal penalties are similarly not generally regarded as revenue in the constitutional sense under the general premise that malfeasance is voluntary and therefore does not involve a tax on involuntary behavior.

Although jurisdiction over revenue measures, including taxes and tariffs, is granted to the House Ways and Means and Senate Finance Committees, jurisdiction over nonrevenue collections is dispersed among a variety of committees. In addition, while the Constitution grants the House the prerogative to originate revenue legislation, that prerogative does not apply to nonrevenue collections, so the Senate may originate such legislation.

Nonrevenue collections are also distinguished from revenues in the way they are recorded in the federal budget process. Rather than being recorded as revenues, they are treated as negative amounts of budget authority and recorded as offsets to spending.

The distinction between revenue and nonrevenue may be made at different stages in the lawmaking process for different purposes: when a measure is referred to committee under Rule X in the House or Rule XXV in the Senate, when a measure is considered by the House under Rule XXI, when Congress or the courts are asked to enforce the Origination Clause of the Constitution, or when it is recorded in the federal budget. This report provides an analysis of the guidelines used for making this distinction and how they are applied in each circumstance.

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Distinguishing Revenue and Nonrevenue Collections

The collection of funds to finance the operations of the federal government is a fundamental part of federal budgeting and the policymaking process. The power to "lay and collect taxes, duties, imposts, and excises" is one of the enumerated powers of Congress under the Constitution.[1] Although this power is broad, not all of the receipts of the federal government actually result from this authority. Federal receipts may also result from various voluntary or business transactions of individuals with the government. The distinction between these types of receipts is applied at several points in the legislative process. Receipts collected as a consequence of the taxing power, including tariffs, are considered revenues in a constitutional sense and are subject to a number of specific rules and requirements.[2] Receipts from some type of voluntary or business transaction, however, are not considered revenues in a constitutional sense. As a consequence, they are not subject to the rules or requirements applied to revenues, although they may be subject to other specific rules or requirements.[3] Nonrevenue receipts include

> user, regulatory and other fees, charges, and assessments levied on a class directly availing itself of, or directly subject to, a governmental service, program, or activity, but not on the general public, as measures to be utilized solely to support, subject to annual appropriations, the service, program, or activity … for which such fees, charges, and assessments are established and collected and not to finance the costs of Government generally. The fee must be paid by a class benefitting from the service, program or activity, or being regulated by the agency; in short, there must be a reasonable connection between the payors and the agency or function receiving the fee.[4]

Similarly, rents and royalties paid to the federal government and proceeds from the sale of federal assets constitute nonrevenue collections, because the purchase is voluntary and the payors receive something of commensurate value for their payments. In this context, civil and criminal penalties are not generally regarded as revenue in the constitutional sense under the general premise that malfeasance is voluntary and therefore does not involve a tax on involuntary behavior.[5]

The House may also view certain legislative language as constituting revenue even if it is framed as a nonrevenue collection—for example, when the amount of funds to be collected would (or could) exceed the government's costs for providing a specific service or the connection between the payor and the beneficiary is attenuated. In such cases, these collections may be regarded as designed, in part, to finance the cost of government operations generally, because the payor would not derive any particular benefit associated with the payment.

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[1] Article 1, Section 8. For a discussion of federal taxing power, see CRS Report R46551, *The Federal Taxing Power: A Primer*, by Milan N. Ball.

[2] See CRS Report R41408, *Rules and Practices Governing Consideration of Revenue Legislation in the House and Senate*, by Megan S. Lynch.

[3] For additional discussion of the use of governmental fees and other nonrevenue receipts, see Congressional Budget Office (CBO), *Charging for Federal Services*, December 1, 1983, https://www.cbo.gov/publication/15511; *The Growth of Federal User Charges*, August 1, 1993, https://www.cbo.gov/publication/20892; and *The Growth of Federal User Charges: An Update*, October 1, 1995, https://www.cbo.gov/publication/14950.

[4] "Policies of the Chair," *Congressional Record*, vol. 137 (January 3, 1991), p. 66.

[5] This is in contrast to an interpretation recommended in the *Report of the President's Commission on Budget Concepts*, and frequently applied in other contexts, that categorizes any receipts that are "'governmental' in character" as revenues, including regulatory fees and fines. See *Report of the President's Commission on Budget Concepts* (Washington: GPO, 1967), p. 65.

Although the distinction between revenues and nonrevenue collections is applied in both the House and Senate, it is particularly salient in the House, where it is made explicit at the beginning of each Congress when the Speaker of the House enunciates certain policies with respect to several aspects of the legislative process.[6] Among these policies is guidance concerning the application of House rules, precedents, and practices with respect to two separate but related procedures. First, this concept is applied in connection with defining committee jurisdictions with respect to governmental receipts and assisting committees in staying within their appropriate jurisdictions. Second, the meaning of what receipts are considered revenues in a constitutional sense is fundamental for understanding enforcement of the House's constitutional prerogative to originate revenue legislation, particularly when determining when the House may take action to enforce that prerogative.[7]

Committee Jurisdiction and Referral

Jurisdiction over revenue measures, including taxes and tariffs, is granted to the House Ways and Means and Senate Finance Committees, while jurisdiction over nonrevenue collections is dispersed among a variety of committees.[8] Unlike jurisdiction over measures concerning revenues, jurisdiction over measures concerning nonrevenue collections is not specifically identified in House and Senate rules. Instead, such collections are treated as an aspect of committee jurisdiction over some underlying legislative issue or subject area. For example, jurisdiction over agricultural inspection fees is exercised by the House and Senate Committees on Agriculture as an aspect of their jurisdiction over agriculture and agricultural inspections generally.

In the House, after a measure is introduced, the Speaker, acting on the advice of the Office of the Parliamentarian, refers legislation to the appropriate committee(s) based on how its contents align with the subject matter jurisdiction of committees established in clause 1 of House Rule X. In addition, when a measure includes provisions under the jurisdiction of multiple committees, House rules charge the Speaker with referring legislation

> in such a manner as to ensure to the maximum extent feasible that each committee that has jurisdiction under clause 1 of rule X over the subject matter of a provision thereof may consider such provision and report to the House thereon.[9]

As a matter of practice, then, the jurisdictions of committees over particular subjects are generally protected by the referral process. This is supplemented in the case of revenue legislation by House Rule XXI, clause 5(a)(1) (stated below), which specifically provides that a point of order may be raised against the consideration of a measure or amendment that includes a revenue provision if it were reported from a committee other than the Ways and Means Committee:[10]

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[6] "Announcement by the Speaker Pro Tempore," *Congressional Record*, daily edition (January 4, 2021), p. H38. In this announcement, a reference is made to a full statement of the policy announced at the beginning of the 102nd Congress with respect to jurisdictional concepts related to clause 5(a) of Rule XXI, *Congressional Record*, vol. 137 (January 3, 1991), p. 66.

[7] For a discussion of how the concept of revenues is interpreted for enforcing House prerogatives under Article I, Section 7, clause 1, of the U.S. Constitution (known as the Origination Clause), see CRS Report R46558, *The Origination Clause of the U.S. Constitution: Interpretation and Enforcement*, by James V. Saturno.

[8] The jurisdiction of the House Ways and Means Committee and the Senate Finance Committee are specified in House Rule X, clause 1(t), and Senate Rule XXV, paragraph 1(i), respectively.

[9] House Rule XII, clause 2.

[10] For more information on points of order and the enforcement of House rules, see CRS Report 98-307, *Points of Order, Rulings, and Appeals in the House of Representatives*, by Valerie Heitshusen.

> A bill or joint resolution carrying a tax or tariff measure may not be reported by a committee not having jurisdiction to report tax or tariff measures, and an amendment in the House or proposed by the Senate carrying a tax or tariff measure shall not be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A point of order against a tax or tariff measure in such a bill, joint resolution, or amendment thereto may be raised at any time during pendency of that measure for amendment.

Interpreting what constitutes revenues is essential for the application of House rules concerning committee jurisdiction and the referral of legislation. The same interpretation necessarily informs the converse and clarifies what constitutes nonrevenue collections as well, because such collections are not revenues. In this way, House rules distinguish between revenue legislation, which must be referred to the Ways and Means Committee, and nonrevenue legislation, which may be referred to the committee (or committees) having jurisdiction over the subject matter upon which the fees or charges might be based.

House Rule XXI, clause 5(a)(1), also has an impact on the consideration of legislation and amendments that may be offered. The prohibition on revenue provisions in measures reported by a committee not having that jurisdiction or amendments containing revenue provisions, either in the House or proposed by the Senate, would apply to any language that would produce "a necessary, certain, and inevitable change in revenue collections or tax statuses or liabilities."[11]

Senate practices similarly distinguish between revenue and nonrevenue legislation. Legislation is referred in the Senate by the presiding officer, on the advice of the Office of the Parliamentarian, based on the application of committee jurisdictions set forth in Senate Rule XXV. In addition, under Senate Rule XVII, a measure is referred to the committee with "jurisdiction over the subject matter which predominates in such proposed legislation." In almost all cases, if a measure includes a revenue provision, such a provision would be considered the predominant subject. Legislation with revenue provisions is thus referred to the Finance Committee, while legislation with nonrevenue receipts is referred to the committee having jurisdiction over the predominant subject matter in the measure.

The Origination Clause

Article I, Section 7, clause 1, of the U.S. Constitution is known as the Origination Clause because it requires:

> All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

As generally understood, this clause carries two kinds of prohibitions. First, the Senate may not originate any measure that includes a provision for raising revenue, and second, the Senate may not propose any amendment that would raise revenue to a House-passed nonrevenue measure. However, the Senate may generally amend a House-originated revenue measure as it sees fit.

The Constitution does not provide specific guidelines as to what constitutes a bill for raising revenue, so the House relies on its own precedents to guide its interpretation. The House applies a broad standard and construes its prerogatives expansively to include any "meaningful revenue proposal." This standard is based on a provision-by-provision review of whether a measure may be considered to have the potential to affect revenue and not simply whether it would make changes in the tax code directly. The precedents and practices of the House that distinguish

[11] Rules of the House of Representatives, in *House Rules and Manual*, One Hundred Eighteenth Congress, H.Doc. 117-161, 117th Cong., 2nd sess., [compiled by] Jason A. Smith, Parliamentarian (Washington: GPO, 2023), §1066).

between revenue and nonrevenue collections inform the types of language the House considers to be subject to its prerogative to originate bills for raising revenue. This includes not only legislation to make changes in the tax code directly but also legislation framed as fees that would (or could) be used to pay for government operations generally rather than as payment for something of specific value to the payor, as well as any potential change in tariffs, including any trade sanctions that could impose import restrictions.

As a constitutional requirement, rather than a House rule, the House may not choose to waive its application, and so whether a Senate measure or amendment will or will not be disallowed may present a significant issue between the chambers.[12] Although the House may enforce its prerogative through any of several methods, the most common is through the adoption of a privileged resolution returning the measure to the Senate. Because this resolution has historically been printed on blue paper, this is known as blue-slipping.[13]

The House prerogative to originate revenue legislation, however, does not apply to nonrevenue collections. As a consequence, the Senate may originate such legislation.

Statutory Authority for Nonrevenue Collections

Federal agencies that engage in transactions with the general public must have statutory authority to charge a fee. In some cases, this authority may be specific to an agency and may allow it to retain such collections. In other cases, agencies may use general authority originally provided under the Independent Offices Appropriations Act, FY1952 (IOAA).[14]

Circular A-11, issued by the Office of Management and Budget (OMB), states that what it terms "user charges" includes any "fee, charge, or assessment the Government levies on a class of the public directly benefiting from, or subject to regulation by, a Government program or activity," with the further proviso that the authorizing law "must limit the payers of the charges to those benefiting from, or subject to regulation by, the program or activity."[15] OMB identifies the following as user charges:

- Collections from nonfederal sources for goods and services provided (for example, the proceeds from the sale of goods by defense commissaries, electricity by power marketing administrations, stamps by the Postal Service, fees charged to enter national parks, and premiums charged for flood and health insurance);

[12] This is because a House decision not to enforce the Origination Clause would not insulate a law from challenge in the courts. In U.S. v. Munoz-Flores, 495 U.S. 385, 391-397 (1990), the Supreme Court held, "Although the House certainly can refuse to pass a bill because it violates the Origination Clause, that ability does not absolve this Court of its responsibility to consider constitutional challenges to congressional enactments." And later, "A law passed in violation of the Origination Clause would thus be no more immune from judicial scrutiny because it was passed by both Houses and signed by the President than would a law passed in violation of the First Amendment."

[13] For more on this enforcement procedure, see CRS Report R46556, *Blue-Slipping: Enforcing the Origination Clause in the House of Representatives*, by James V. Saturno.

[14] Title V of P.L. 82-137. This provision was superseded in 1982 when Title 31 was recodified in P.L. 97-258 and is now codified at Title 31, Section 9701, of the *U.S. Code*. Although the current language was enacted in P.L. 97-258, the authority is still often referred to as originating in the IOAA, such as in OMB Circular A-25 (revised 1993), *Transmittal Memorandum No. 1, User Charges*, https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf. For a broad discussion of user fees, see Clayton P. Gillette and Thomas D. Hopkins, "Federal User Fees: A Legal and Economic Analysis," *Boston University Law Review*, vol. 67 (1987), pp. 795-874.

[15] OMB, Circular A-11 (July 2024), *Preparation, Submission, and Execution of the Budget*, §20, p. 34, https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf.

- Voluntary payments to social insurance programs, such as Medicare Part B insurance premiums;
- Miscellaneous customs fees (for example, U.S. Customs Service merchandise processing fees);
- Proceeds from asset sales (property, plant, and equipment);
- Proceeds from the sale of natural resources (such as timber, oil, and minerals);
- Outer Continental Shelf receipts;
- Spectrum auction proceeds;
- Many fees for permits and regulatory and judicial services;
- Specific taxes and duties on an exception basis; and
- Credit program fees deposited into the credit program account and recorded in the budget on a current basis.

Independent Offices Appropriation Act

Title V of the IOAA expressed the sense of Congress that "any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency … shall be self-sustaining to the full extent possible." Further, the statute provided that "the head of each Federal agency is authorized by regulation … to prescribe therefor such fee, charge, or price, if any, as he shall determine." The reference to this authority originating in the IOAA was superseded by a recodification of Title 31 in 1982 (P.L. 98-258) that replaced the original authority.

Although originally enacted in an appropriations act, this authority is permanent legislation and applies to all federal agencies (except mixed-ownership government corporations). Furthermore, this language authorizes agencies to charge fees but does not mandate that they do so.[16] The Supreme Court held in *National Cable Television Association v United States* in 1974 that fees levied under the authority provided in the IOAA must be based on the value of the thing provided. A charge in excess of that to offset the cost of public activities, as well as private benefits of regulatory activities, could arguably be considered a tax, which is not what is authorized by the statute.[17]

The language in Title 31 currently states

> Each charge shall be—
> (1) fair; and
> (2) based on—
> (A) the costs to the Government;
> (B) the value of the service or thing to the recipient;
> (C) public policy or interest served; and
> (D) other relevant facts.

[16] Government Accountability Office, *Principles of Federal Appropriations Law* (3rd ed., 2008), GAO-08-978SP, vol. 3, ch. 12, sec. D, p. 12-148.

[17] National Cable Television Ass'n v United States, 415 U.S. 336 (1974).

OMB has issued Circular A-25 to establish federal policy regarding how fees are to be assessed for government services.[18] The circular provides information on the scope and types of activities subject to user charges and the basis upon which user charges are to be set. It also provides guidance for agency implementation of charges and the disposition of collections.

The Miscellaneous Receipts Act

Some statutes may provide specific authority for fees to be retained by an agency when a service is intended to be operated on a substantially self-sustaining basis. Absent such specific authority, however, the Miscellaneous Receipts Act requires that any nonrevenue collections be credited to the general fund of the Treasury as miscellaneous receipts.[19] Fees assessed solely under the authority of the IOAA do not include such an exception, and the proceeds of such fees are consequently deposited in the Treasury as miscellaneous receipts. Once deposited, funds are available to be appropriated but are not otherwise available to be used by the depositing agency without further statutory authorization.

Treatment of Nonrevenue Collections in the Federal Budget Process

The definition of *budget authority* in Section 3(2) of the Congressional Budget Act provides for nonrevenue collections to be treated as negative amounts of budget authority rather than as revenues.[20] As a consequence, the collected funds are presented in the budget as offsets against spending authority. A reduction of offsetting collections or receipts is correspondingly recorded as a positive amount of budget authority. The authority to spend these funds is not automatic, however, and they are further categorized as offsetting collections or receipts, depending on their availability for obligation. The authority to obligate may be provided in either appropriations acts or other laws.

Offsetting Collections

Offsetting collections are nonrevenue collections authorized by law to be credited to appropriations or fund expenditure accounts.[21] These fees are available for obligation to meet the account's purpose without further congressional action. Accordingly, because the receiving agency has the authority to obligate and expend offsetting collections, offsetting collections constitute budget authority. For example, fees charged by the U.S. Citizenship and Immigration Services to expedite its processing of certain petitions and applications are available to carry out those purposes.

[18] OMB, Circular A-25 (revised 1993), *Transmittal Memorandum No. 1, User Charges*, https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf.

[19] Act of March 3, 1849 (Statutes at Large, vol. 9, Thirtieth Congress, Sess. II, Chap. CX), codified at 31 U.S.C. §3302(b).

[20] P.L. 93-344, codified at 2 U.S.C. §622(2).

[21] For an account of how OMB presents offsetting collections in the budget, see OMB, Circular A-11, *Preparation, Submission, and Execution of the Budget*, §20, p. 32.

Offsetting Receipts

In contrast, offsetting receipts are nonrevenue collections that are recorded as offsets against gross outlays but are not authorized to be credited to a specific expenditure account.[22] In some cases they are termed undistributed offsetting receipts, because they are offset against totals for the government as a whole rather than from a single agency or subfunction in order to avoid presenting a distorted budgetary picture of agency or subfunction totals. Offsetting receipts may be deposited in either specific accounts or in the general fund of the Treasury. Offsetting receipts cannot be obligated and expended, however, without further congressional action. Because offsetting receipts are not available for obligation, they do not constitute budget authority until Congress takes action to appropriate them. An example of such collections is rents and royalties paid to the federal government for offshore oil and gas leases.

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[22] For an account of how OMB presents offsetting receipts in the budget, see OMB, Circular A-11, *Preparation, Submission, and Execution of the Budget*, §20, p. 33