

that it held social security benefits to be gifts or gratuities. In the 1939 amendments to the Social Security Act, Congress clearly tied the taxes to the benefits by earmarking the amount of the social security taxes collected for the benefits granted.

It seems fruitless to engage in conceptualization regarding the essential nature of social security benefits as earned rights or gratuities. The only question which is constitutionally relevant is whether such benefits are income under the 16th amendment. As I have indicated above, they are * * *.

Based upon the above analysis, it is my opinion that annuities or pensions received under the Railroad Retirement or Social Security Acts may be included in gross income as proposed without violating the 16th amendment or any other constitutional requirement.

Excerpt from Ways and Means Committee hearing, March 3, 1967.
(Exchange between Congressman Curtis and Assistant Secretary Surrey, p. 378 of Hearings Report:)

Mr. SURREY. Even if for the sake of discussion social security is called a gratuity, the tax treatment would present only a question of interpretation of present law which has a statement in it that gifts and gratuities are not taxable.

Mr. CURTIS. That is right.

Mr. SURREY. It would not deal with the question of whether Congress if it cared to, wanted to say these were taxable.

Mr. CURTIS. I am simply saying in establishing the basic theory of social security it was clear that these were gratuities, not rights that could be enforced, something that Congress could take away tomorrow. Congress can't take away the rights under the civil service retirement program. These are contractual rights. * * * They can alter this, and this was the basis, I am suggesting, or had a great deal to do with the Treasury rulings that social security benefits were not to be taxed * * *. Congress can come along and say that we want to tax this form of gratuity.