

State A requires commercial airlines to pay an annual property tax based on the value of the airline's fleet of planes that operate in the state. The tax is calculated by multiplying the percentage of the airline's annual arrivals and departures in the state by the fleet's overall value. The airline's fleet of planes is based in State B. Ten percent of the airline's annual arrivals and departures occur in State A. The airline has sued to challenge the State A tax, arguing that it is unconstitutional.

Is the state tax likely constitutional?

- A. No, because Congress has the sole power to tax property moving in interstate commerce.
- B. No, because the airline's fleet is based in State B.
- C. Yes, because it does not place an undue burden on interstate commerce in violation of the negative implications of the commerce clause.
- D. Yes, because states have plenary authority to construct their tax system in any manner they choose.

Explanation:

A **state tax** on the value of **property in the state** (ie, ad valorem property tax) is generally valid. But when this property **moves in interstate commerce** (eg, planes), the state tax must comply with the **negative implication of the commerce clause**.^{*} This **prohibits states** from discriminating against or **unduly burdening interstate commerce**. As a result, this type of state tax is **valid when**:

- the state has a **substantial nexus** with the taxed property, which is established when the property has sufficient contacts with the state such that the property has acquired a **taxable situs** in the state
- the tax is **fairly apportioned** based on the amount of time that the taxed property is in the state
- the tax is **not discriminatory** against interstate commerce *and*
- the tax is **fairly related** to the benefits or services provided by the taxing state **(Choice A)**.

Here, there is a substantial nexus between State A and the airline since 10% of the airline's annual arrivals and departures occur in the state (taxable situs) **(Choice B)**. The tax is fairly apportioned because it is based on the percentage of the airline's annual arrivals and departures in the state. It is nondiscriminatory since it applies equally to intrastate and interstate commerce. And the tax is fairly related to the benefits provided by the state (eg, use of airport). Therefore, the state tax does *not* unduly burden interstate commerce and is likely constitutional.

^{*}A state tax on property permanently located in another state is unconstitutional since the taxing state lacks jurisdiction over the property.

(Choice D) The Tenth Amendment reserves to the states any power that the Constitution does not expressly grant to the federal government, including the power to construct a state tax system. But this power is not plenary (ie, absolute) because states must comply with other constitutional provisions.

Educational objective:

A state tax on property moving in interstate commerce is valid if (1) the state has a substantial nexus with the taxed property such that the property has a taxable situs in the state, (2) the tax is fairly apportioned, (3) the tax is nondiscriminatory, and (4) the tax is fairly related to benefits or services provided by the state.

References

- Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977) (setting forth the four-factor test used to determine if a state tax violates the commerce clause).

- *Braniff Airways, Inc. v. Neb. State Bd. of Equalization and Assessment*, 347 U.S. 590, 599–601 (1954) (holding that a state ad valorem property tax on an airline's fleet was valid since the airline had a taxable situs in the state).
- 71 Am. Jur. 2d State and Local Taxation § 163 (2020) (explaining that states may levy taxes on instrumentalities of commerce when they have a taxable situs in the state and the tax is fairly apportioned to their time in the state).

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State taxation of interstate commerce

State taxes

- Ad valorem property – tax on value of property in state
- Sales – tax on sale of goods within state
- Use – tax on goods purchased out-of-state but used within it
- Doing business – tax on privilege to do business in state



Tax affects **interstate commerce**



Complete Auto test

- **Substantial nexus** between state & taxed person/activity
- **Fairly apportioned** pursuant to rational formula
- **Not discriminatory** against interstate commerce
- **Fairly related** to state services/benefits



Tax complies with dormant
commerce clause