

The House of Representatives passed a bill imposing a tax on all insurance premiums for policies covering shipments of goods to foreign countries. The legislative record states that the purpose of this export tax is to subsidize the marine insurance industry. The tax applies to all goods manufactured or grown in every state. The bill passed the Senate and was signed into law by the President.

Pursuant to the statute, a company paid the tax on insurance premiums for policies that cover goods exported to its foreign subsidiaries. The company filed a claim for a tax refund and was denied. The company filed suit alleging that the tax is unconstitutional.

Is this federal tax likely constitutional?

- A. No, because Congress does not have the power to tax exported goods or closely related services.
- B. No, because the tax does not reasonably relate to raising revenue.
- C. Yes, because Congress's taxing power is unlimited.
- D. Yes, because the tax is necessary to serve a compelling government interest.

Explanation:

The taxing and spending clause gives Congress broad power to tax and spend for the general welfare (ie, any public purpose). However, this power is not unlimited and must comply with other constitutional provisions—including the **export clause (Choice C)**. The export clause **prohibits federal taxation of:**

- **exported goods**, which are goods leaving the U.S. and shipped to foreign countries *and*
- **services and activities closely related** to the export process—eg, insurance premiums paid to cover the shipment of exported goods (as seen here).

Therefore, the federal tax on insurance premiums for policies covering shipments of goods to foreign countries is not within Congress's power to tax and is unconstitutional.

(Choice B) The tax in this case is reasonably related to raising revenue because its purpose is to raise funds that will be used to subsidize the marine insurance industry. But this issue is irrelevant because the tax is an unconstitutional export tax.

(Choice D) Federal export taxes are never valid, even if the government shows that they are necessary to serve a compelling interest (ie, satisfy strict scrutiny).

Educational objective:

Congress has broad power to tax and spend for the general welfare. However, Congress can never impose taxes on exported goods or on services and activities closely related to the export process.

References

- U.S. Const. art. I, § 9 (export clause).
- *United States v. Int'l Bus. Machs. Corp.*, 517 U.S. 843, 846–47 (1996) (explaining that the export clause prohibits federal taxation of exported goods and services and activities closely related to the export process).

Congress's taxing power

