

The United States Department of the Interior granted a man the food and drink concession in a federal park located in a state. The man operated his concession out of federally owned facilities in the park. The federal statute authorizing the Interior Department to grant such concessions provided that the grantees would pay only a nominal rental for use of these federal facilities because of the great benefit their concessions would provide to the people of the United States.

The state legislature enacted a statute imposing an occupancy tax on the occupants of real estate within that state that is not subject to state real estate taxes. The statute was intended to equalize the state tax burden on such occupants with that on people occupying real estate that is subject to state real estate taxes.

Pursuant to that statute, the state's Department of Revenue attempted to collect the state occupancy tax from the man because the federal facilities occupied by the man were not subject to state real estate taxes.

The man sued to invalidate the state occupancy tax as applied to him.

What is the strongest constitutional ground upon which the man could challenge the occupancy tax?

- A. The tax violates the commerce clause by unduly burdening the interstate tourist trade.
- B. The tax violates the equal protection clause of the Fourteenth Amendment because the tax treats him less favorably than federal concessionaires in other states who do not have to pay such occupancy taxes.
- C. The tax violates the privileges or immunities clause of the Fourteenth Amendment by interfering with the fundamental right to do business on federal property.
- D. The tax violates the supremacy clause of Article VI and the federal statute authorizing such concessions.

Explanation:

Federal immunity from state & local taxes/regulations

Tax/regulation	Definition	Permissibility
Direct	Applies to federal government—including its agencies & instrumentalities	<i>Immune</i> unless: <ul style="list-style-type: none">• Congress consents to tax/regulation
Indirect	Applies to affiliates—including persons/entities employed by or doing business with federal government	<i>Not immune</i> unless: <ul style="list-style-type: none">• Congress grants immunity <i>or</i>• tax/regulation discriminates against or substantially interferes with federal duties

The **supremacy clause** immunizes the **federal government**, including its agencies and instrumentalities, **from state and municipal taxation** unless Congress consents. But the federal government's **affiliates**—ie, persons or entities employed by or doing business with the federal government—are **only immune if**:

- **Congress grants** the affiliate immunity
- the **tax discriminates** against the federal government or its affiliates *or*
- the **tax substantially interferes** with the affiliate's **federal purpose or duties**.

Here, the state attempted to collect an occupancy tax from the man—an affiliate of the federal government who was granted the food and drink concession in a federal park. The federal statute authorizing this grant provided that the man would only pay nominal rent due to the great public benefit provided by concessions. And since the state tax may substantially interfere with the man's federal purpose or duties by raising his costs, his strongest argument is that the tax violates the supremacy clause and the federal statute **as applied** to him.

(Choice A) Under the **dormant commerce clause**, state taxes are invalid if they unduly burden interstate commerce. But the state tax here does not unduly burden the interstate tourist trade because it (1) applies to activities with a *substantial nexus* to the state, (2) is *fairly apportioned*, (3) does *not discriminate* against interstate commerce, and (4) is *fairly related* to the services and benefits provided by the state.

(Choice B) The Fourteenth Amendment **equal protection clause** is triggered when a state treats similarly situated persons differently. But state laws that do not substantially impact a fundamental right or intentionally discriminate against a protected class (as seen here) are almost always upheld under mere rational basis scrutiny.

(Choice C) The Fourteenth Amendment privileges or immunities clause bars states from interfering with the very limited rights of [national citizenship](#)—which do not include a right to do business on federal property.

Educational objective:

The federal government's affiliates are subject to state and municipal taxation unless (1) Congress grants them immunity, (2) the tax is discriminatory, or (3) the tax substantially interferes with their federal purpose or duties.

References

- U.S. Const. art. VI, cl. 2 (supremacy clause).
- *McCulloch v. Maryland*, 17 U.S. 316, 436 (1819) (establishing federal immunity from state taxation and regulation).
- *United States v. New Mexico*, 455 U.S. 720, 735 n.11 (1982) (explaining that state taxes on affiliates of the federal government must be nondiscriminatory and cannot substantially interfere with its activities).

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