

A federal statute established a national lottery and created a new federal agency to administer it. In order to sell lottery tickets directly to the public, the agency established outlets throughout the country. Some of these outlets are within a state that levies a general tax on the gross receipts from all in-state gaming operations. The state seeks to tax the agency on the sales of lottery tickets from its outlets within the state.

Must the agency pay the state gross receipts tax?

- A. No, because a federal agency may not pay any monies to a state without explicit federal statutory authorization to do so.
- B. No, because a state may not impose a tax directly on the federal government or any of its agencies or instrumentalities.
- C. Yes, because it is a generally applicable tax that does not discriminate against the agency.
- D. Yes, because the federal government is not exempt from state taxation on its commercial activities.

Explanation:

Under the **supremacy clause**, the **federal government** is **immune** (ie, exempt) from any **direct taxation** by the **states**—including taxes on its commercial activities **(Choice D)**. As a result, states may not impose taxes on the federal government—or any of its agencies or instrumentalities—without the express consent of Congress.

Here, the state levies a general tax on the gross receipts (ie, total income) from all gaming operations within the state. And the state seeks to impose that tax on a new federal agency created to administer a national lottery. But since the agency is immune from direct state taxation, it is not required to pay the gross receipts tax.

(Choice A) A federal agency *can* pay monies to a state without explicit statutory authorization if Congress has granted the agency broad discretion to spend its funds. But even if a federal agency has such discretion, a state cannot *force* the agency to pay a tax.

(Choice C) A state can never impose a direct tax on a federal agency without Congress's explicit consent—even if that tax is generally applicable and therefore does not discriminate against the agency (as seen here).

Educational objective:

The federal government, its agencies, and its instrumentalities are immune from direct taxation by the states unless Congress expressly consents.

References

- McCullough v. Maryland, 17 U.S. 316, 436 (1819) (striking down a state tax imposed on the Bank of the United States).

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Federal immunity from state tax/regulation

