

In order to reduce the federal deficit, Congress enacted a statute imposing a five percent national retail sales tax. The tax was levied upon all retail sales in the United States and applied equally to the sales of all kinds of goods.

Is this tax constitutional as applied to retail sales of newspapers?

- A. No, because retail sales taxes are within the taxing power of the states.
- B. No, because the imposition of a tax on the sale of newspapers violates the freedom of the press.
- C. Yes, because it is within Congress's power to tax.
- D. Yes, because the tax is necessary to serve the compelling interest of balancing the federal budget.

Explanation:

The **taxing and spending clause** (ie, general welfare clause) gives Congress broad authority to raise revenue through taxation. This includes the power to impose **indirect taxes** (eg, sales tax) if they are **applied equally** in every state AND are reasonably related to **revenue production**—as seen here.

But a tax also must respect other constitutional provisions—including the First Amendment freedom of the press. The retail sales tax does so here because it is generally applicable to all goods and in no way targets press operations **(Choice B)**. And since the sales tax does not implicate any other constitutional provisions, it is a constitutional exercise of Congress's taxing power—even **as applied** to retail sales of newspapers.

(Choice A) Retail sales taxes are within the taxing power of the states *as well as* Congress's **enumerated** taxing power.

(Choice D) The tax need not be necessary to serve a compelling interest because it is generally applicable and does not target the press.

Educational objective:

Indirect taxes must be applied equally in every state and reasonably related to revenue production. And such taxes cannot violate any other constitutional provision—eg, by targeting the press in violation of the First Amendment.

References

- *Leathers v. Medlock*, 499 U.S. 439, 447 (1991) (holding that the government may not exercise its taxing power to single out the press or target small groups of speakers).

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Congress's taxing power

