

The federal government hired a private contractor to repair and maintain the roads in a national park located wholly within a state. In a written agreement, the government agreed to pay the contractor an annual fixed fee and to reimburse the contractor for all expenses associated with the work. The agreement provided that the contractor must pay for all materials and expenses from a special bank account into which the government would deposit required payments and reimbursements.

The state collected a generally applicable sales tax from the contractor on materials purchased for the work with money from the special bank account.

Was the state's imposition of the sales tax constitutional in this situation?

- A. No, because the federal government is immune from any taxes levied by a state. (5%)
- B. No, because the tax was paid from an account directly funded with federal money and the entire economic cost of the tax was borne by the federal government. (21%)
- C. Yes, because payment of the tax did not unduly interfere with the contractor's performance of the work and was not an undue burden on a federal function. (19%)
- D. Yes, because the tax did not discriminate against the federal government or its contractors, and the materials were purchased by the contractor rather than by the federal government. (53%)

Correct

53% Answered correctly

47 secs Time Spent

2023 Version

Explanation:

The **supremacy clause** immunizes the **federal government**, including its agencies and instrumentalities, **from state taxation** unless Congress consents. But **states can tax the federal government's affiliates**, including persons or entities employed by or doing business with the federal government (eg, contractors—as seen here) **(Choice A)**. This is true even if the cost of the tax is ultimately passed on to the federal government. As a result, an affiliate must pay these taxes **unless**:

Congress has granted the affiliate **immunity**
the tax **discriminates** against the federal government or the affiliate *or*
the tax **substantially interferes** with the affiliate's ability to accomplish its **federal purpose or duties**.

Here, the private contractor is responsible for paying the state sales tax when purchasing materials to maintain and repair roads in a national park located within a state. The tax was paid from a bank account directly funded with federal money, and the entire economic cost of the tax was borne by the federal government **(Choice B)**. However, the tax is only an *indirect* tax on the federal government since the materials were purchased by the contractor and the contractor must pay the tax when purchasing them. And the tax is constitutional because:

Congress did not grant the contractor immunity

the tax did not discriminate against the federal government or its contractors since it is generally applicable and

there is no indication that the tax substantially interfered with the contractor's federal purpose or duties.

(Choice C) States may impose nondiscriminatory taxes on federal government affiliates so long as those taxes do not *substantially* interfere with the affiliate's ability to accomplish its federal purpose or duties. Therefore, the fact that payment of the tax did not *unduly* interfere with the contractor's performance of the work and was not an undue burden on a federal function is irrelevant.

Educational objective:

States can tax federal government affiliates (eg, contractors) unless (1) Congress granted the affiliate immunity, (2) the tax is discriminatory, or (3) the tax substantially interferes with the affiliate's federal purpose or duties.

References

Alabama v. King & Boozer, 314 U.S. 1, 8–9 (1941) (holding that a state can tax a federal contractor even if the tax is passed on to the federal government).

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).

71 Am. Jur. 2d State and Local Taxation § 149 (2022) (stating that state taxation of federal contractors is generally valid if it is nondiscriminatory and does not substantially interfere with the federal government's activities).

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Federal immunity from state tax/regulation

