

The childhood home of a former U.S. president is part of a national park located in a city. The National Park Service entered into a contract with an independent antique collector to acquire items owned by residents of the city during the former president's lifetime. According to the contract, the collector purchases items and then sells them to the Park Service at a price equal to the collector's cost plus a 10% commission. Purchases by antique collectors are ordinarily subject to the sales tax of the state in which the city is located.

The collector has filed suit in state court to enjoin collection of the tax on these purchases for the Park Service, claiming that the sales tax is unconstitutional as applied to them.

Should the state court issue the injunction?

- A. No, because as the purchaser of the antiques, the collector, rather than the federal government, is liable for the tax.
- B. No, because the suit is within the exclusive jurisdiction of the federal courts.
- C. Yes, because the federal government is contractually obligated to pay the amount of the sales tax when the government covers the collector's cost of the antiques.
- D. Yes, because under the supremacy clause, the federal program to acquire the antiques preempts the state sales tax on the purchase of these items.

Explanation:

Under the Article VI [supremacy clause](#), the federal government is generally immune from direct taxation by the states. This is because such taxes could hinder or destroy the operations of the federal government. 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). 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 **federal purpose or duties**—eg, when a high tax burden makes it impossible for the affiliate to accomplish its federal functions.

Here, the independent antique collector (federal government affiliate) is responsible for paying the state sales tax when purchasing items to sell to the National Park Service. Although the federal government is contractually obligated to pay the amount of the sales tax when it covers the collector's cost, this is not a direct tax (**Choice C**). And since (1) Congress has not granted the collector immunity, (2) the tax is nondiscriminatory, and (3) there is no indication that it imposes a prohibitively high tax burden, the state should not be enjoined from collecting this tax.

(Choice B) Federal courts do not have *exclusive* jurisdiction over suits arising under federal law (as seen here) since state courts also have jurisdiction over such suits.

(Choice D) The supremacy clause also allows federal law to [preempt](#) conflicting state law. But there is no *direct* conflict here since the antique collector can pay the sales tax without violating federal law. And there is no *indirect* conflict since the collector can still acquire antiques to accomplish the federal program's purpose.

Educational objective:

States can tax federal government affiliates (eg, employees) 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).

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Federal immunity from state tax/regulation

