

A fatal virus recently infected poultry in several nations. Some scientific evidence indicates that the virus can be transmitted from poultry to humans.

Poultry farming is a major industry in several U.S. states. In one such state, the legislature has enacted a law imposing a fee of two cents per bird on all poultry farming and processing operations in the state. The purpose of the fee is to pay for a state inspection system to ensure that no poultry raised or processed in the state is infected with the virus.

A company that has poultry processing plants both in the state and in other states has sued to challenge the fee.

Is the fee constitutional?

- A. No, because although it attaches only to intrastate activity, in the aggregate, the fee substantially affects interstate commerce.
- B. No, because it places an undue burden on interstate commerce in violation of the negative implications of the commerce clause.
- C. Yes, because it applies only to activities that take place wholly within the state, and it does not unduly burden interstate commerce.
- D. Yes, because it was enacted pursuant to the state's police power, which takes precedence over the negative implications of the commerce clause.

Explanation:

The commerce clause gives Congress the power to regulate [interstate commerce](#)—ie, nearly all activities involving two or more states. This clause also carries a negative implication (ie, the **dormant commerce clause**) that **prohibits states** from discriminating against or **unduly burdening interstate commerce**. But a **state tax** that affects interstate commerce is not unduly burdensome if the tax is:

- applied to a person or activity that has a **substantial nexus** with the state
- **fairly apportioned** to avoid taxing activities performed in other states
- **not discriminatory** against interstate commerce *and*
- **fairly related** to services or benefits provided by the state.

Here, the state law imposes a fee (ie, tax) on all poultry farming and processing operations in the state. Although the fee only attaches to intrastate activity, in the aggregate, the fee likely has a substantial effect on interstate commerce (**Choice A**). But it does not *unduly* burden interstate commerce—and is therefore constitutional—because:

- the entities taxed have poultry farming and processing operations in the state (substantial nexus)
- the fee only applies to birds raised or processed in the state (fairly apportioned)
- the fee applies to *all* poultry farming and processing operations in the state (nondiscriminatory) *and*
- the fee appears reasonable compared to the poultry inspection system that the state will provide (fairly related) (**Choice B**).

(Choice D) The Tenth Amendment gives states all powers that are not expressly granted to the federal government by the Constitution—eg, police power to impose taxes on state activities. But pursuant to the [supremacy clause](#), state police powers do *not* take precedence over other constitutional provisions, including the negative implications of the commerce clause.

Educational objective:

A state tax that affects interstate commerce does not violate the dormant commerce clause if it is (1) applied to a person or activity that has a substantial nexus with the state, (2) fairly apportioned, (3) nondiscriminatory, and (4) fairly related to services or benefits provided by the state.

References

- Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977) (setting forth the four-factor test for determining whether a state tax violates the commerce clause).

Dormant commerce clause

