

A federal statute imposes an excise tax of \$100 on each new computer sold in the United States. It also appropriates the entire proceeds of that tax to a special fund, which is required to be used to purchase licenses for computer software that will be made available for use, free of charge, to any resident of the United States.

Is this statute constitutional?

- A. No, because the federal government may not impose any direct taxes on citizens of the United States.
- B. No, because the statute takes, without just compensation, the property of persons who hold patents or copyrights on computer software.
- C. Yes, because it is a reasonable exercise of Congress's powers to tax and spend for the general welfare.
- D. Yes, because the patent power authorizes Congress to impose reasonable charges on the sale of technology and to spend the proceeds of those charges to advance the use of technology in the United States.

## Explanation:

### Congressional taxing power

Type of tax	Definition	Constitutional requirements
<b>Direct</b>	<ul style="list-style-type: none"><li>• Taxes on persons or their property</li><li>• Payment cannot be avoided</li></ul>	Allowed if: <ul style="list-style-type: none"><li>• apportioned proportionately among states</li><li>• reasonably related to revenue production</li></ul>
<b>Indirect</b>	<ul style="list-style-type: none"><li>• Taxes on goods/transactions</li><li>• Payment can be avoided or shifted to another (eg, consumer)</li></ul>	Allowed if: <ul style="list-style-type: none"><li>• identical taxation in every state</li><li>• reasonably related to revenue production</li></ul>
<b>Export</b>	<ul style="list-style-type: none"><li>• Taxes on goods/services leaving the country</li></ul>	Not allowed

The **taxing and spending clause** gives **Congress broad power** to tax and spend for the **general welfare** (ie, any public purpose). Congress can use its taxing power:

- **directly** (ie, on persons or real property) – so long as the tax is apportioned proportionately among the states and reasonably related to revenue production **(Choice A)** *or*
- **indirectly** (ie, on goods or transactions) – so long as the tax is identical in every state and reasonably related to revenue production.

Here, a federal statute imposes an *indirect* excise tax on new computers sold in the U.S. This tax is identical in every state since it applies to every sale of a new computer. Excise taxes are a common and reasonable way to raise revenue, and the proceeds of this tax are used for the general welfare—to provide free computer-software licenses to U.S. residents. Therefore, the statute is constitutional.

**(Choice B)** The **takings clause** prohibits the government from taking private property for public use without just compensation. But here, the federal government is *purchasing* licenses to use the computer software—not *taking* property from the holders of patents or copyrights on that software.

**(Choice D)** Under the copyright and patent clause, Congress can enact laws encouraging the production of creative works (copyright laws) and inventions (patent laws). But this clause does not authorize Congress to impose reasonable charges on, or spend proceeds from, the sale of these works or inventions.

**Educational objective:**

Congress has broad power to impose (1) direct taxes that are apportioned proportionately among the states and reasonably related to revenue production or (2) indirect taxes that are identical in every state and reasonably related to revenue production.

**References**

- Thomas v. United States, 192 U.S. 363, 371 (1904) (holding that a tax on the sale of stock is an indirect tax).
- Fernandez v. Wiener, 326 U.S. 340, 360–63 (1945) (upholding an indirect tax that is identical in every state).

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