Widgets are manufactured wholly from raw materials mined and processed in a state. The only two manufacturers of widgets in the United States are also located in that state. However, their widgets are purchased by retailers located in every state.

The state legislature is considering the adoption of a statute that would impose a tax solely on the manufacture of widgets. The tax is to be calculated at 3% of their wholesale value.

Which of the following arguments would be LEAST helpful to the state in defending the constitutionality of this proposed state tax on widgets?

A. A tax on the manufacture of widgets may be imposed only by the state in which the manufacturing occurs and, therefore, it is not likely to create the danger of a multiple tax burden on interstate commerce.

B. At the time widgets are manufactured and taxed they have not yet entered the channels of interstate commerce.

C. Because of the powers reserved to them by the Tenth Amendment, states have plenary authority to construct their tax system in any manner they choose.

D. The economic impact of this tax will be passed on to both in-state and out-of-state purchasers of widgets and, therefore, the tax is wholly nondiscriminatory in its effect.

Explanation:

State taxation of interstate commerce

(*Complete Auto* test)

State tax on interstate commerce valid if tax:

- applied to person or activity with *substantial nexus* to state
- *fairly apportioned* to avoid taxing interstate activities performed in other states
- does *not discriminate* against interstate commerce AND
- *fairly related* to services & benefits provided by state

Under the **Tenth Amendment**, any power that the Constitution does not expressly grant to the federal government—including the power to construct a state tax system—is **reserved to the states**. But here, this is the *least* helpful argument for the state because this power is **not plenary** (ie, absolute). Instead, states must comply with other constitutional provisions. For example, a **state tax on interstate commerce** (as seen here) must comply with the **dormant commerce clause** and is only valid if it:

- is applied to persons or activities with a **substantial nexus** to the state—eg, widgets manufactured from raw materials mined and processed in the state

- is **fairly apportioned** to avoid taxing interstate activities performed in other states and thereby imposing multiple tax burdens—eg, tax imposed only in state where manufacturing occurs **(Choice A)**, tax applied before widgets enter channels of interstate commerce **(Choice B)**

- does **not discriminate** by favoring in-state over out-of-state entities—eg, economic impact passed on to both in-state and out-of-state purchasers **(Choice D)** *and*

- is **fairly related** (ie, reasonable compared) to services and benefits provided by the state—eg, police protection, public roads.

Educational objective:

Under the dormant commerce clause, states cannot tax interstate commerce unless the tax is (1) levied on persons or activities that have a substantial nexus with the state, (2) fairly apportioned, (3) nondiscriminatory, and (4) fairly related to state-provided services or benefits.

References

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

- 71 Am. Jur. 2d State and Local Taxation § 157 (2019) (explaining how state taxation cannot unduly burden interstate commerce).