

In order to provide funds for a system of new major airports near the 10 largest cities in the United States, Congress levies a tax of \$25 on each airline ticket issued in the United States. The tax applies to every airline ticket, even those for travel that does not originate in, terminate at, or pass through any of those 10 large cities.

Is this tax constitutional as applied to the issuance in the United States of an airline ticket for travel between two cities that will not be served by any of the new airports?

- A. No, because the burden of the tax outweighs its benefits for passengers whose travel does not originate in, terminate at, or pass through any of the 10 largest cities.
- B. No, because the tax adversely affects the fundamental right to travel.
- C. Yes, because an exemption for the issuance of tickets for travel between cities that will not be served by the new airports would deny the purchasers of all other tickets the equal protection of the laws.
- D. Yes, because Congress has broad discretion in choosing the subjects of its taxation and may impose taxes on subjects that have no relation to the purpose for which those tax funds will be expended.

Explanation:

Congressional taxing power

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

The **taxing and spending clause** grants Congress the broad power to impose **indirect taxes** on the subject of its choosing. The taxed subject need not have any relation to the purpose for which the tax funds will be spent. Instead, an indirect tax is **constitutional** as long as it is (1) **identical** in every state and (2) **reasonably related** to **revenue production**.

Here, Congress has imposed a \$25 tax on airline tickets. This indirect tax is identical in every state since it applies to *all* airline tickets issued in the U.S. And the tax is reasonably related to raising revenues for a system of new major airports near the 10 largest cities. Therefore, this tax is constitutional—even **as applied** to airline tickets for travel between cities that will not be served by the new airports.

(Choice A) Courts do not weigh the burdens and benefits of a tax to determine its constitutionality.

(Choice B) The Fifth Amendment due process clause generally prohibits the federal government from substantially impairing persons' **fundamental rights** (eg, the right to travel). And though a tax on airline tickets may affect the right to travel, a minimal tax of \$25 would not *substantially* impair this right.

(Choice C) This type of exemption—which does not appear in the tax levied by Congress—may raise **equal protection** concerns since it treats similarly situated passengers differently. But the exemption would *not* deny passengers equal protection of the laws

since it (1) does not substantially impact a fundamental right or protected class and (2) would likely pass rational basis scrutiny.

Educational objective:

Under the taxing and spending clause, Congress can impose indirect taxes on goods or transactions as long as the taxes are (1) identical in every state and (2) reasonably related to revenue production. This is true even if the taxes have no relation to the purpose for which the funds will be spent.

References

- *Fernandez v. Wiener*, 326 U.S. 340, 355–63 (1945) (holding that an IRS inheritance tax is constitutional since it is indirect, identical in every state, and reasonably related to revenue production).

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