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State Imposition of Use Tax: Is It Constitutional?

-by Neil E. Harl'

With many of the states hard-pressed for revenue and with more and more big-ticket items purchased out-of-state (and even out-of-country), the constitutionality of state imposition of a use tax has become a more significant issue than was the case a few years ago. The matter of constitutionality rests with the provision in the United States Constitution that was drafted in a much different era. As noted below, technology has undermined the underlying justification for the constitutional provision and globalization has altered the economic landscape sufficiently to call into question some of the original justifications and rationalizations for the provision dating back to the 18th Century.

The constitutional provision

The U.S. Constitution states “...no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of Congress.” That provision seems clear in limiting the rights of states to levy taxes on imports or exports. As explained below, however, the court decisions have been far less limiting on the rights of states to impose a use tax or other tax on goods passing into or out of the state.

The reasons given for the import-export clause of the U.S. Constitution typically come down to three factors that appeared to weigh heavily on the framers of the Constitution.

- The first factor was an attempt to avoid disruption of foreign policy. As stated in Michelin Tire Corp. v. Wages, one of the principal concerns of the drafters of the Constitution was that the federal government should “...speak with a single voice... in matters relating to foreign trade and international policy.” Quite importantly, there is no concurrent state power in that area. The drafters clearly wanted to give the new federal government the authority to speak for the country. That factor would seem to have some support even today.

- The second reason often given for the export-import language has been to prevent the diversion of federal funds from the federal government to the states. At the time of the drafting of the U.S. Constitution, the sources of revenue for the federal government

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California Supreme Court reversed the case on appeal, noting that the immunity of imported goods (in this case the yacht) from state taxation under the United States Constitution was lost when the yacht was unwrapped and placed in the water in California for use in the State of California.

In conclusion

The right of states to impose a use tax on imported goods, notwithstanding the wording of the United States Constitution, is clearly established under judicial precedent. That does not mean, however, that a state might not enact a tax that would clearly fall within the constitutional language although states appear to enjoy considerable latitude in that respect.

ENDNOTES


2 Art. I, § 10, Clause 2.

3 Art. I, § 10, Clause 2.

4 See, e.g., Caterpillar Tractor Co. v. The Department of Revenue, 47 Ill. 2d 278, 265 N.E. 2d 675 (1970) (use of imported goods by Illinois users subject to state use tax).


7 Id.


9 75 U.S. 123 (1868).


11 U.S. Const. Art. I, § 10, Cl. 2.


13 Art. I, § 10, Cl. 2.

14 Art. I, § 10, Cl. 2.