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.\(^1\) The matter of constitutionality rests with the provision in the United States Constitution\(^2\) 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 18\(^{th}\) Century.

The constitutional provision

The U.S. Constitution\(^3\) 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.\(^4\)

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.\(^5\)

- The first factor was an attempt to avoid disruption of foreign policy. As stated in Michelin Tire Corp. v. Wages,\(^6\) 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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were far more limited than today and the amount of annual revenue was fairly modest, at least when measured by today’s standards.

- The third reason for the export-import language was to preserve harmony among the states. The major concern at the time was the advantage of the maritime or seaboard states in terms of being the gateways for imports from other countries and the point of shipment of exports to points outside the United States. The understood objective was, as some have stated, to foster a free flow of goods in commerce. There apparently was relatively little concern about the movement of goods from state to state although the “dormant” commerce clause focused on that aspect of the movement of goods. Obviously, the widespread use of air shipments has undercut the original argument relating to the inherent advantage of maritime states.

**The litigated cases**

In an early U.S. Supreme Court decision, *Woodruff v. Parham*, the court held that a uniform tax imposed by a municipal corporation on all sales in the municipality, whether the sales were made by a citizen of that state or a citizen of some other state, and whether the goods sold were the produce of the state within which the ordinance as passed or of some other state, was validly imposed. In a more recent case, *Iтел Containers International Corp. v. Huddleston*, the State of Tennessee had imposed a state sales or use tax on the leasing of containers used to ship cargo in international commerce. The court held that the tax was not a tax on imported or exported goods, but rather a tax on a business transaction occurring within the state. Moreover, the tax did not draw revenue from the federal government in violation of the export-import clause.

In a California case, *Sugarman v. State Board of Equalization*, the taxpayer had purchased a yacht which was built in Amsterdam, The Netherlands and had the yacht shipped to San Francisco. The State of California imposed a use tax on the yacht. The taxpayer objected on various grounds, including constitutional grounds. The trial court held for the taxpayer finding the state use tax unconstitutional. However, the 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.

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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.

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**CASES, REGULATIONS AND STATUTES**

by Robert P. Achenbach, Jr

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**BANKRUPTCY**

**GENERAL**

**EXEMPTIONS.**

PENSION PLANS. The debtor claimed a profit-sharing plan and two IRAs as exempt retirement funds under Section 522(b)(4)(A). The court held that the profit-sharing fund was not eligible for the exemption because the debtor failed to get a favorable determination letter from the IRS for the plan. Because the IRAs received rollover funding from the plan, the IRA funds were also not qualified for the exemption. In addition, the court found that the plan was disqualified because the debtor had control of the fund and engaged in prohibited transactions. *In re Daniels, 2011-2 U.S. Tax Cas. (CCH) § 50,477* (Bankr. D. Mass. 2011).