

## Reason Blog

# The Christmas Tree Tax

Seth McKelvey | November 9, 2011

The Obamas have chosen their Christmas tree this year, and they want to help choose yours, too. At least that's the point of the Department of Agriculture's new Christmas Tree Promotion Board. *The Foundry*:

The purpose of the Board is to run a “program of promotion, research, evaluation, and information designed to strengthen the Christmas tree industry’s position in the marketplace”....

To pay for the new Federal Christmas tree image improvement and marketing program, the Department of Agriculture imposed a 15-cent fee on all sales of fresh Christmas trees by sellers of more than 500 trees per year. And, of course, the Christmas tree sellers are free to pass along the 15-cent Federal fee to consumers who buy their Christmas trees.

And consumers may not notice a 15 cent price hike on a once a year purchase. The small size of the tax doesn't make it any less stupid though. The fact that much of the industry practically begged the government to impose the tax on them doesn't help either. As *The American Spectator* points out:

If they want to fund a promotional campaign for their product, they should do it themselves, without involving the USDA.

That goes for all similar checkoff taxes, such as the ones for beef, milk, soybeans, etc. There's no reason the federal government should be involved in shaping consumer preferences. The Christmas Tree Tax has done something useful in reminding us that the Commodity Promotion, Research, and Information Act of 1996 is a dumb law.

There's also some contention over the use of the word *fee*: Acting Administrator of Agricultural Marketing David R. Shipman insists that it "is not a tax nor does it yield revenue for the Federal government." Here's Jim Harper of the *Cato Institute*:

Do Christmas tree farmers go to jail if they refuse to pay? Yes. It's a tax.

How about the other half of the equation: Does it yield revenue for the Federal government? Yes. Circularly spending the tax to promote said tax doesn't mean it's not revenue, it just means it pointless.

A pointless tax that no one will notice is still worth being upset over, though not because it is some malicious attack on Christmas. "This little 15-cent tree tax is a microcosm of what's wrong with constitutional law, evermore divorced from the Constitution as it is," writes Ilya Shapiro:

First, there are obvious Free Exercise and Equal Protection issues here. That is, unless we consider Christmas trees to be wholly secular, this is an obvious burden on the free exercise of Christianity, and one that no other religion faces....

Second, and probably even more important given the times in which we live, where in the Constitution does the federal government get the power to tax the sale of a local agricultural product? Setting aside trees trucked in from out-of-state, there's no interstate commerce here to regulate....

Third, even if the tax is a lawful use of federal power, shouldn't Congress be the body levying it, rather than an agency of the USDA?

Good point. So good, in fact, spokesman Matt Lehrich is now saying the USDA "is going to delay implementation and revisit this action," according to *USA Today*. Perhaps all of this backlash has gotten through to someone. Either that, or fear of conservatives hyperventilating about the "War on Christmas."

The lobbyists will still be there once the media fervor dies down, though, so don't hold your breath.