



Volume 17 Number 1

March 2010

State Tax Return

JOIN THE DIALOGUE: SHOULD THE SUPREME COURT LIMIT FEDERAL COURT JURISDICTION OVER MATTERS INVOLVING STATE TAXES?

Charolette Noel
Dallas
1.214.969.4538
cfnoel@jonesday.com

On March 22, 2010, the U.S. Supreme Court heard oral arguments on whether taxpayers should be barred from suing in federal court on federal constitutional challenges to state tax laws.

Levin v. Commerce Energy, Dkt. No. 09-223, the first significant state tax case the Court will hear this Term, addresses whether the Tax Injunction Act or the doctrine of comity prevents a taxpayer from bringing suit in federal court challenging a tax where the taxpayer does not seek a refund of a discriminatory tax.

Comity embodies federal courts proper respect for state functions, instructing them to refrain from unduly interfering with the legitimate activities of the states. Comity is balanced by a "strong federal interest in having certain classes of cases, and certain federal rights, adjudicated in federal court." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 728 (1996), including the right of access to federal courts for federal constitutional challenges such as discrimination against out-of-state businesses.

Multistate taxpayers are often concerned about state courts' ability to provide a level playing field for federal constitutional challenges. The Supreme Court has long acknowledged that "state attachments, state prejudices, state jealousies, and state interests, might sometimes obstruct, or control, or be supposed to obstruct or control, the regular administration of justice." *See Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 347 (1816).

Experience, particularly in the bankruptcy area, shows that state courts often take a more skeptical view than federal courts of taxpayers' state and local tax challenges. In light of states' heavy budget burdens and the taxpayers' burden of proof, it is not surprising that states and the courts funded by those state budgets may be inclined to deny state tax challenges. A fair hearing at trial on federal constitutional issues is particularly important, given the small percentage of tax cases that the Supreme Court will agree to review.

Jones Day filed a brief for COST, as amicus curiae, supporting the respondent's argument that comity is not a bar to federal court jurisdiction where adjudicating the suit would not disrupt the inflow of state tax revenue. Responding to our brief, the petitioner asserts that federal courts should be barred from hearing "any 'determination of the unconstitutionality of a state tax scheme'" because a determination of unconstitutionality would "halt its operation." *See Reply*

Brief of Petitioner at 6. The basic issue is whether the doctrine of comity completely forecloses federal court access to protect from abuses of state power, despite Congress' intent that the federal judiciary be able to remedy such constitutional violations. Surely not!



This article is reprinted from the *State Tax Return*, a Jones Day monthly newsletter reporting on recent developments in state and local tax. Requests for a subscription to the *State Tax Return* or permission to reproduce this publication, in whole or in part, or comments and suggestions should be sent to Christa Smith (214.969.5165) in Jones Day's Dallas Office, 2727 N. Harwood, Dallas, Texas 75201 or StateTaxReturn@jonesday.com.

©Jones Day 2010. All Rights Reserved. No portion of the article may be reproduced or used without express permission. Because of its generality, the information contained herein should not be construed as legal advice on any specific facts and circumstances. The contents are intended for general information purposes only.