



## Taxpayers Cannot Sue Out-of-State Taxing Authorities in Local Courts

***The Supreme Court ruling will prevent taxpayers from challenging assessments from out-of-state taxing authorities in local courts.***

On May 13, 2019, the U.S. Supreme Court ruled that states retain sovereign immunity from private suits brought in other states' courts. Among other consequences, the ruling will prevent taxpayers from challenging assessments from out-of-state taxing authorities in local courts.

The Respondent in the case, Gilbert Hyatt, was a California resident who moved to Nevada. The Petitioner, the Franchise Tax Board of California, audited him extensively. Hyatt in turn sued the Board in Nevada state court, alleging torts committed in the course of its audit and, after a jury trial, ultimately obtained a judgment for \$50,000.

In this dispute—the parties' third before the Supreme Court—the Court held that the U.S. Constitution prohibits private suits against one state in the court of another. Justice Thomas, writing for the majority, explained that "[t]he founding generation . . . took as given that States could not be haled involuntarily before each other's courts." Moreover, "[t]he Eleventh Amendment confirmed that the Constitution was not meant to raise up any suits against the States that were anomalous and unheard of when the Constitution was adopted." In reaching its conclusion, the Court overturned its 1979 decision, *Nevada v. Hall*, 440 U.S. 410 (1979), in which it reached the opposite result. Justice Thomas wrote that, "*Nevada v. Hall* is contrary to our constitutional design and the understanding of sovereign immunity shared by the States that ratified the Constitution."

With the continued rise of online sales and services, states are aggressively pursuing companies and individuals based outside their borders. States have been aided in this effort by *South Dakota v. Wayfair, Inc.*, 585 U.S. \_\_\_ (2018), where the Court determined that states may tax sales made by out-of-state taxpayers that have no physical presence in the taxing state.

Suing out-of-state taxing authorities in local courts provided taxpayers a means to challenge these taxing authorities without the cost of going to the foreign taxing authorities' states. Doing so, moreover, possibly provided taxpayers a friendlier forum than those provided out of state. Those suits are now likely foreclosed by the Court's decision. This decision also undermines state legislative efforts to combat overly aggressive nexus positions of other states by adopting statutes giving courts in the seller's "home" state the power to issue declaratory judgments regarding assessments by other states.

The decision is especially impactful, given that the Tax Injunction Act (28 U.S.C. sec. 1341) already bars access to the federal courts to enjoin, suspend, or restrain a state tax assessment, levy, or collection except where there is no plain, speedy, and efficient state court remedy.



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