THOMSON REUTERS CHECKPOINT

25-JAN J. Multistate Tax'n 43

Journal of Multistate Taxation and Incentives
****1**
January, 2016

U.S. Supreme Court Update

Copyright (c) 2016 RIA

U.S. SUPREME COURT UPDATE

DEBRA S. HERMAN is a partner in the New York City office of the law firm Hodgson Russ LLP. She thanks K. Craig Reilly for his contributions to this column.

Supreme Court Begins New Term With Grant of Certiorari in Nebraska Tribal Sales Tax Case

***43** The U.S. Supreme Court began its 2015-2016 term in early October, and with several cases involving state and local taxes already either pending or on the Court's docket, the Court quickly agreed to hear a challenge by the Village of Pender, Nebraska, several of its residents, and the state, to an Eighth Circuit ruling, holding that the village must comply with tribal liquor license and taxing regulations that impose a 10 percent sales tax on all liquor sales made on the Omaha Indian Reservation. The case, *Nebraska v. Parker* (Docket No. 14-1406), will allow the Court to determine whether Congress intended to diminish the boundaries of the Omaha Indian Reservation in Nebraska when it enacted an 1882 Act that ratified an agreement for the sale of Omaha tribal lands to non-Indian settlers.

The Court also scheduled oral arguments for 12/7/15 in *California Franchise Tax Bd. v. Hyatt* (Docket No. 14-1175), in which the California Franchise Tax Board has asked the Court to review whether principles of immunity and comity shield the Board from a multi-million dollar lawsuit in a Nevada court.

In addition, on October 13, 2015, the Court granted review and vacated judgment in *First Marblehead Corp. v. Massachusetts Comm'r of Revenue* (Docket 14-1422), remanding the case to the Massachusetts Supreme Judicial Court for further consideration in light of the Supreme Court's recent *Wynne* decision.

With respect to new petitions, the Court received an early petition for certiorari from the City of Cleveland, Ohio, in *Cleveland Bd. of Review v. Hillenmeyer* (Docket No. 15-435). In its petition, the City asks the high court to review two decisions by the Ohio Supreme Court that struck down the apportionment method used by the City to apportion the income of nonresident professional athletes for City income tax purposes—the ‘games-played‘ method. Most states and municipalities apply an apportionment method based on the number of ‘duty days‘ spent in the city, or days that an athlete performs services for his or her employer during the year, that result in a smaller tax bill than the ‘games-played‘ method.

****2** The Ohio Supreme Court held that the City's apportionment method violated the Due Process Clause of the U.S. Constitution when applied to professional football players of the National Football League. The Ohio Supreme Court has stayed the enforcement of the decisions while the City appeals to the U.S. Supreme Court. This ‘jock tax‘ appeal will be closely watched, as it could result in a pay-day for Ohio nonresident professional athletes.

As we go to press, five previously reported petitions remain pending before the Court, and the Court has denied two petitions previously covered in this column.

Date Set for Oral Argument in State Sovereignty Case

As reported in a previous column, on 6/30/15, the Supreme Court granted a request for certiorari in *Franchise Tax Bd. of the State of California v. Hyatt*, Docket No. 14-1175, ruling below at 335 P.3d 125 (Nev. 2014). The Court set 12/7/15 as the date for oral argument.

Below, the Supreme Court of Nevada largely reversed a jury award of $139 million in tort damages and $250 million in punitive damages in favor of inventor Gilbert P. Hyatt in his lawsuit against the California Franchise Tax Board (‘FTB‘). Despite, however, the FTB's claims that all of Hyatt's causes of action were barred under principles of discretionary-function immunity and comity, the Nevada high court affirmed the district court's findings that the FTB committed fraud and intentional infliction of emotional distress in its audit of Hyatt. Accordingly—although the damages imposed against the FTB were significantly reduced by the Nevada court—the FTB was unable to escape all liability.

In its petition for review, the FTB presented three questions for review: ‘[1] Whether the federal discretionary-function immunity rule, 28 U.S.C. § 2680(a), is categorically inapplicable to intentional torts and bad-faith conduct; [2] Whether Nevada may refuse to extend to sister States haled into Nevada courts the same immunities Nevada enjoys in those courts; [and 3] Whether *Nevada v. Hall*, 440 U.S. 410 (1979), which permits a sovereign State to be haled into the courts of another State without its consent, should be overruled.‘ The Supreme Court has agreed to review the second and third questions. (For more background on this case, including a detailed discussion of the underlying audit, see U.S. Supreme Court Update, 25 JMT 40 (July 2015).)

Court to Hear Nebraska Tribal Sales Tax Dispute

On 10/1/15, the Court agreed to hear a challenge by the Village of Pender, Nebraska, resident individuals of Pender who were owners or agents of establishments in or near Pender engaged in the sale of alcoholic beverages, and the state of Nebraska (collectively referred to as ‘Pender‘ or ‘Appellants ‘), in *Nebraska v. Parker*, Docket No. 14-1406, ruling below ***44** as *Smith v. Parker*, 774 F.3d 1166 (8th Cir. 2014). The U.S. Court of Appeals for the Eighth Circuit affirmed a lower court's ruling that the Omaha Indian Reservation had not been diminished by an 1882 Act of Congress (the ‘1882 Act ‘) and that, therefore, the Village of Pender was located on Omaha tribal land and must comply with tribal taxing provisions that impose a 10% sales tax on the purchase of alcoholic beverages on tribal land.

****3** In its petition for review, the Appellants argued that the 1882 Act resulted in a reduction of the Omaha tribal lands, and that, as a result, the village of Pender was no longer within the boundaries of the Omaha Indian Reservation and subject to the tribe's taxing regime. According to the Appellants, ‘[t]he Eighth Circuit's decision presents an apparent conflict with the Court's diminishment jurisprudence insofar as it precludes proper consideration of one of the three factors articulated in *Solem* [*v. Bartlett*, 465 U.S. 463 (1984)],‘ in which the Court announced a three-factor analysis meant to guide cases involving the diminishment of tribal lands: (1) the language of the federal act at issue, (2) the events surrounding the passage of the act, and (3) the treatment of the land after the act was passed.

Omaha Tribe's Beverage Control Ordinance.

According to the Eighth Circuit, in 2006, the U.S. Secretary of the Interior approved amendments to the Omaha Tribal Code, which modified the tribe's Beverage Control Ordinance and allowed the tribal government to impose a 10 percent sales tax on the purchase of alcohol from any licensee on tribal land. Following the amendments, the Omaha Tribe attempted to enforce the sales tax on the resident individual Appellants, but these individuals argued that Pender was no longer located within tribal boundaries and therefore the sales were not subject to tax.

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

The resident individual Appellants first filed an action in the Omaha Tribal Court seeking declaratory and injunctive relief against the enforcement of the tribe's alcohol tax. The Omaha Tribal Court, however, determined that the original boundaries of the reservation had not been diminished by the 1882 Act and that Pender was located on Omaha tribal land, and therefore the Pender area residents were subject to the tribe's sales tax laws. A federal district court then affirmed the tribal court's ruling, and the Appellants appealed to the Eighth Circuit.

1882 Act of Congress not intended to change boundaries of Omaha Indian Reservation.

The U.S. Court of Appeals for the Eighth Circuit noted in its opinion that ‘the pivotal issue in this case is whether Congress intended to ‘diminish’ the boundaries of the Omaha Indian Reservation in Nebraska when it enacted an 1882 Act that ratified an agreement for the sale of Omaha tribal lands to non-Indian settlers.‘; In attempting to answer this question, the district court had looked to the language of the act, the historical context surrounding the passage of the act, and the subsequent treatment of the area in question. The Eighth Circuit reviewed the district court's decision *de novo.*

Focusing primarily on the language of the 1882 Act itself, the Eighth Circuit agreed with the district court and held that the Act's language ‘did not clearly evince Congress' intent to change the boundaries of the Omaha Reservation, but rather ‘indicates that the United States intended to act as the Omaha Tribe's sales agent for purposes of surveying and auctioning its reservation land . . . with the proceeds held in trust in the United States Treasury for the benefit of members of the Omaha Tribe.’‘

****4** Specifically, the Eighth Circuit stated, upon review of Section 1 of the Act, ‘notably absent from this language is any explicit reference to ‘cession’ combined with ‘sum certain’ payment, both of which would have been found ‘precisely suited to terminating reservation status.’ *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 344, 118 S. Ct. 789, 139 L. Ed. 2d 773 (1998).‘ Accordingly, the court found that there was ‘nothing in this case to overcome the ‘presumption in favor of the continued existence’ of the Omaha Indian Reservation,‘ and that Pender, therefore, remained subject to the tribe's liquor license and taxation laws.

Questions the Court will now consider.

In its petition for certiorari, Pender argued that the three factors announced in *Solem*—(1) the ‘statutory language used to open the Indian lands,‘ (2) the ‘events surrounding the passage of a surplus land Act,‘ and (3) the ‘events that occurred after the passage of a surplus land Act‘—are all equally relevant in determining whether diminishment has occurred. Pender argues, however, that the lower courts essentially ignored the third *Solem* factor—the subsequent treatment of the area—which Pender strongly believes supports its argument that the village is no longer located on tribal lands.

Accordingly, Pender presented, and the Court will now consider, the following questions for review:

1. Whether ambiguous evidence concerning the first two *Solem* factors necessarily forecloses any possibility that diminishment could be found on a *de facto* basis; and

2. Whether the original boundaries of the Omaha Indian Reservation were diminished following passage of the Act of August 7, 1882.

Cleveland Asks Supreme Court to Review ‘Jock Tax‘ Cases

In *Cleveland Bd. of Review v. Hillenmeyer*, Docket No. 15-435, petition for cert. filed 10/6/15, rulings below as *Hillenmeyer v. Cleveland Bd. of Review*, N.E.3d (Ohio 2015) and *Saturday v. Cleveland Bd. of Review*, 33 N.E.3d 46 (Ohio 2015), the City of Cleveland Board of Review (‘Cleveland‘ or ‘Board of Review‘) has asked the Court to review two decisions issued by the

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Ohio Supreme Court in which the court held that Cleveland's application of its ‘games-played‘ apportionment method used to determine taxable wages of nonresident professional athletes violates the Due Process Clause of the U.S. Constitution when applied to National Football League (‘NFL‘) players.

Games played vs. duty days.

Cleveland's tax ordinance imposes a 2 percent tax on all ‘qualifying wages, earned and/or received . . . by nonresidents of the City for work done or services performed or rendered within the City or attributable to the City. ‘ (Cleveland Codified Ordinance 191.0501) The ordinance also confers authority on the tax administrator to ‘adopt and promulgate and to enforce and interpret rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of [the municipal-income tax ordinances], subject to approval by the board of review.‘

****5** Pursuant to this authority, Cleveland's tax administrator promulgated Cleveland Central Collection Agency (‘CCA‘) Regulation 8 :02(E)(6), which sets forth a ***45** games-played allocation method applicable to the income of a professional athlete (the ‘Games-Played Allocation Method‘). Although Cleveland has a general 12-day statutory grace period that exempts most occasional entrants from the City's income tax if they spend less than 12 days working in the city (the ‘Occasional Entrants Rule‘), the exemption excludes, among others, professional athletes.

Under the Games-Played Allocation Method, the City of Cleveland taxes the income earned by nonresident athletes based on a fraction, the numerator of which is the total number of games that occur within the City over a denominator equal to the total number of games played everywhere. Under this methodology, a visiting football player who travels to Cleveland for a single regular season or pre-season game would have approximately one twentieth, or 5% of his income allocated to the City (NFL teams generally play 16 regular season and 4 pre-season games each year).

Moreover, because the numerator in Cleveland's allocation formula includes team games for which an athlete ‘was excused from playing because of injury or illness,‘ the tax is imposed even if the player does not travel with his team to the city. (As discussed more fully below, these were the facts in the *Saturday* decision where, because of injury, none of Saturday's work was performed in Cleveland as he was in Indianapolis on game day engaging in physical rehabilitation in preparation for future games.) According to Cleveland's petition for certiorari, its method ‘reasonably relates to the income earned within the City.‘

In contrast to the Games-Played Allocation Method, most other cities and states that tax professional athletes on a portion of their income do so on the basis of ‘duty days.‘ In other words, other jurisdictions allocate athletes' income based on the number of days spent in the taxing municipality over the total number of mandatory duty days (i.e., games, practices, meetings, training camps, etc., which, according to the players, result in anywhere between 150 to 170 duty days, as compared to only 20 annual games) spent everywhere over the course of the season.

As explained by the Ohio Supreme Court, using the fact pattern above, when the ‘duty-days‘ method is applied only about 1.25 percent of the athlete's income would be subject to tax in Cleveland (e.g., 2 Cleveland duty days/170 everywhere duty days).

Ohio Supreme Court finds ‘games-played‘ methodology violates due process.

The former NFL players challenging Cleveland's Games-Played Allocation Method were former Chicago Bears linebacker Hunter Hillenmeyer and retired Indianapolis Colts center Jeffrey Saturday. Hillenmeyer argued that the Games-Played Allocation Method dramatically overstated his Cleveland income (as noted above, under the Games-Played Allocation Method, approximately 5% of his income was subject to tax, while, under a ‘duty-days‘ allocation method, approximately 1.25% of his income would have been subject to tax). Saturday argued that no part of his income for the season at issue was subject to tax because he neither played nor attended his team's game in Cleveland that year—Saturday remained in Indianapolis to treat an injury on game day.

****6** The players raised both constitutional and non-constitutional issues in the courts below. In response to the challenge by Saturday (who never played a down in Cleveland), the Ohio Supreme Court held that Cleveland's municipal income tax ordinance and the Games-Played Allocation Method do not allow for the taxation of a professional athlete's income when the athlete remains in his home city during his team's Cleveland-based games. Accordingly, the court did not reach Saturday's constitutional challenges.

In Hillenmeyer's case, however, the state high court rejected the City's Games-Played Allocation Method because it found the scheme failed to afford due process to professional athletes. (The court also determined that the carve-out from the Occasional Entrants Rule for professional athletes did not result in an equal protection violation under the U.S. Constitution because there was a rational basis for the exclusion.) In its petition for review, Cleveland asks only that the U.S. Supreme Court decide whether its income tax scheme comports with due process.

According to the Ohio Supreme Court, 'Cleveland's power to tax [under the Due Process Clause] reaches only that portion of a nonresident's compensation that was earned by work performed in Cleveland. The games-played method reaches income that was performed outside of Cleveland, and thus Cleveland's income tax as applied is extraterritorial.' Citing to *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) and *Moorman Mfg. Co. v. Blair*, 437 U.S. 267 (1978), the Ohio Supreme Court found that Cleveland's Games-Played Allocation Method violated two restrictions meant to guard against extraterritorial taxation: (1) it lacked a constitutionally mandated 'minimum connection' between the city and the activities it attempted to tax, and (2) the method was not rationally related to 'values connected with the taxing state.'

In support of its Games-Played Allocation Method, Cleveland relied on cases involving the apportionment of business income, but the court noted that while 'income from a trade or business may be apportioned according to a general formula among jurisdictions in which the business has operations . . . , [wage compensation] must be allocated to the place where the employee performed the work.'

According to the Ohio Supreme Court, '[d]ue process requires an allocation that reasonably associates the amount of compensation taxed with work the taxpayer performed within the city.' Applying this framework, the court held that the Games-Played Allocation Method violates due process as applied to NFL players like Hillenmeyer by 'reaching income for work that was performed outside of Cleveland.'

In striking down Cleveland's Games-Played Allocation Method, the court found that, '[c]onsistent with the rule that the taxing authority may not collect tax on a nonresident's compensation earned outside its jurisdiction, the 'duty-days' method properly includes as taxable income only that compensation earned in Cleveland by accounting for all the work for which an NFL player . . . is paid, rather than merely the football games he plays each year.' In other words, the Ohio Supreme Court affirmed the 'duty-days' method as a constitutionally permissible method of income apportionment.

Questions for review.

****7** In its petition for certiorari, Cleveland asks the U.S. Supreme Court to review the Ohio Supreme Court's due process findings and presents four questions for review:

> ***46** 1. Whether Cleveland's games-played apportionment method used to apportion the wages of nonresident professional athletes results in extraterritorial taxation in violation of the Due Process Clause when applied to professional football players of the National Football League since the measurement of such method is not based on time or days but rather on games?
>
> 2. Whether, for purposes of the Due Process Clause, the criteria for selecting an apportionment method differs where the income to be apportioned is wages of a nonresident natural person versus business income of a nonresident corporation?

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

3. Whether the employment documents of nonresident professional football players of the National Football League can provide the clear and cogent evidence necessary to impeach the validity and propriety of Cleveland's games-played apportionment method when that method is applied to such players for purposes of the Due Process Clause?

4. Whether Cleveland, by taxing wages earned for a game conducted within the City by a nonresident professional player of the National Football League who did not play in the game or travel to Cleveland for the game, taxes wages earned outside the City in violation of the Due Process Clause?

Petitions Still Pending

The following petitions remained pending as the JOURNAL went to press.

Due Process challenge to CA's Unclaimed Property Law. In *Taylor v. Yee*, Docket No. 15-169, petition for cert. filed 8/5/15, ruling below at 780 F.3d 928 (9th Cir. 2015), a group of California taxpayers ask the Court to review the constitutionality of California's Unclaimed Property Law (Cal. Civ. Proc. Code § 1300, *et seq.* ('UPL')) on an as-applied basis. The U.S. Court of Appeals for the Ninth Circuit held that the California Controller did not violate the Due Process Clause in administering the UPL. Specifically, it found that the taxpayers failed to sufficiently state an as-applied claim to support their argument that the Controller failed to provide constitutionally adequate notice for the transfer of property under the UPL on a pre-escheat basis by failing to obtain information from all available state databases.

In their petition for certiorari, the taxpayers cite to the Supreme Court's recent decision in *Horne v. Dep't of Agriculture*, in which the Court held that the U.S. Government had violated a group of raisin growers' constitutional rights under the Takings Clause of the Fifth Amendment by requiring growers to set aside a certain portion of their raisins for government use without offering just compensation.

The taxpayers ask the Court whether, in light of that decision, the Ninth Circuit's ruling should be remanded for further proceedings. Alternatively, the taxpayers ask the Court to consider whether the UPL violates the Due Process Clause because it allegedly 'deprives owners of their property without affording constitutionally adequate notice.' (For more background on this case, including a discussion of the current notice requirements under California's UPL, see U.S. Supreme Court Update, 25 JMT 41 (November/December 2015).)

****8 NV energy company challenges denial of a refund for use tax paid under a facially unconstitutional tax statute.** In *Sierra Pacific Power Co. v. Nevada*, Docket No. 15-25, petition for cert. filed 7/2/15, ruling below at 338 P.3d 1244 (Nev. 2014), the Nevada Supreme Court, in an *en banc* opinion, held that two subsidiaries of NV Energy, Inc., were not entitled to refunds for use taxes paid under an admittedly unconstitutional tax provision.

According to the Supreme Court of Nevada, the energy companies were not entitled to refunds for use taxes paid under the statute because they did not show the tax, as actually assessed, discriminated against interstate commerce. Specifically, the court found that the energy companies paid no higher tax than their competitors and that while an exemption granted under the statute was unconstitutional, the tax itself was not.

NV Energy asks the U.S. Supreme Court to review the Nevada court's holding. Specifically, NV Energy asks the court to consider whether 'a state court violate[s] the federal Due Process rights of a taxpayer to 'meaningful backward-looking relief' and a 'clear and certain remedy' for the exaction of an unconstitutional tax . . . by holding that even though a challenged tax scheme facially violates the dormant Commerce Clause, an affected taxpayer is not entitled to a refund absent proof that an in-state competitor benefited from the discriminatory tax scheme.' (For more background on this case, see U.S. Supreme Court Update, 25 JMT 41 (November/December 2015).)

 © 2020 Thomson Reuters. No claim to original U.S. Government Works.

Satellite providers dormant Commerce Clause challenges. In *DIRECTV, LLC v. Massachusetts Dep't of Revenue*, Docket No. 14-1499, petition for cert. filed 6/18/15, ruling below at 25 N.E.3d 258 (Mass. 2015) and *DIRECTV, Inc. v. Roberts*, Docket No. 14-1524, petition for cert. filed 6/23/15, ruling below at No. M2013-0167-COA-R3-CV (Tenn. 2015), DIRECTV and DISH Network, two providers of direct broadcast satellite services (the 'satellite providers '), petitioned the Supreme Court to review the question of whether businesses are 'similarly situated' for Commerce Clause purposes if they directly compete in a relevant market.

In the rulings below, both the Massachusetts Supreme Judicial Court and the Tennessee Court of Appeals found that because of varying regulatory schemes, the satellite providers were not similarly situated to cable providers. The satellite providers were therefore unable to show that the states' tax schemes discriminated against satellite providers in violation of the dormant Commerce Clause. (For more background on this case, including a detailed discussion of the two lower courts' rulings, see U.S. Supreme Court Update, 25 JMT 39 (October 2015).)

ERISA preemption provision challenge to MI health insurance tax. In *Self-Insurance Inst. of America, Inc. v. Snyder*, Docket No. 14-741, petition for cert. filed 12/18/14, ruling below at 761 F.3d 631, 59 EBC 1406 (6th Cir. 2014), the U.S. Court of Appeals for the Sixth Circuit affirmed a district court's ruling that the Michigan Health Insurance Claims Assessment Act (Mich. Comp. Laws §§ 550.1731-1734 (the 'Michigan Act'))—which imposes a 1 percent tax, along with various reporting and record-keeping requirements, on all paid claims by carriers and third-party administrators to healthcare providers for services rendered in Michigan for Michigan residents—is not prohibited by ERISA's preemption provision (29 U.S.C. § 1144(a)).

****9** ***48** As explained by the Sixth Circuit in its decision upholding the Michigan Act, one of the purposes of ERISA is 'to provide a uniform regulatory regime over employee benefit plans.' Accordingly, 'ERISA contains a broad preemption provision that 'supersede[s] any and all State laws insofar as they . . . *relate* to any employee benefit plan' that falls under the regulation of ERISA. (29 U.S.C. § 1144(a))' (emphasis added). The Sixth Circuit interpreted this standard to mean that '[a] law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan.'

In the proceedings below, the Self-Insurance Institute of America, Inc. ('SIIA ') argued that the Michigan Act has an impermissible connection with employee benefit plans inasmuch as the Michigan Act: '(1) interferes with the administration of the plans; (2) imposes administrative burdens in addition to those prescribed by ERISA; and (3) interferes with the relationships between ERISA-covered entities.' The Sixth Circuit disagreed with all three of SIIA's contentions, however.

In its petition for review, SIIA argues that '[t]he circuit court invoked a strong presumption against the preemption of state taxing powers to read [ERISA's preemption provisions] narrowly despite Congress's deliberate choice of preemptive language whose breadth has been repeatedly emphasized by this Court, and Congress's express recognition that ERISA can and does preempt state tax laws.' Accordingly, SIIA argues (as it did in the proceedings below) that the Supremacy Clause of the U.S. Constitution (art. VI, § 2) and ERISA's preemption provision, prohibit the application of the Michigan Act to ERISA-covered entities. (For more background on this case, including a detailed discussion of the circuit court's response to SIIA's specific claims, see U.S. Supreme Court Update, 25 JMT 45 (May 2015).)

Petitions Denied

The Court denied review in the previously reported petition ***Nelson v. Comm'r of Revenue***, Docket No. 15-62, petition for cert. denied 10/5/15, ruling below as *Comm'r of Revenue State of Minnesota v. Nelson*, No. B251215 (Cal. Ct. App. 1/6/15), *rev. denied*, No. S224461 (Cal. 4/15/15). A California taxpayer sought review of the California Court of Appeal's denial of his motion to vacate a judgment for unpaid Minnesota petroleum and sales taxes. The taxpayer, who was the majority owner of several Minnesota gas stations, contended that the Minnesota courts' denial of his requests for discovery in the underlying tax proceedings violated his procedural due process rights and, therefore, the Minnesota judgment should not be given full faith and credit in the California courts.

WESTLAW © 2020 Thomson Reuters. No claim to original U.S. Government Works.

The Court also denied review in the previously reported petition ***Hambleton v. Washington***, Docket No. 14-1436, petition for cert. denied 10/13/15, ruling below at 335 P.3d 398 (Wash. 2014). The Supreme Court of Washington denied two estates' challenges to Washington's retroactive application of a 2013 amendment to the state's estate tax laws. The amendment granted Washington greater authority to tax qualified terminable interest property (QTIP) trust assets, but the estates claimed that the state's eight-year retroactive application of the amendment violated their due process rights. The Washington Supreme Court rejected this argument, finding that the amendment (and the period of retroactivity) satisfied a rational basis review.

****10** The U.S. Court of Appeals for the Eighth Circuit affirmed a lower court's ruling that the Omaha Indian Reservation had not been diminished [and, therefore, the Village of Pender, Nebraska] must comply with tribal taxing provisions that impose a 10% sales tax on the purchase of alcoholic beverages on tribal land.

[The City of Cleveland has asked the Court to review two decisions holding] that Cleveland's application of its ‘games-played‘ personal income tax apportionment method used to apportion the wages of nonresident professional athletes violates the Due Process Clause.

The Ohio Supreme Court affirmed the ‘duty-days‘; method as a constitutionally permissible method of income apportionment.

In *Taylor v. Yee*, a group of California taxpayers ask the Court to review the constitutionality of California's Unclaimed Property Law on an as-applied basis.

DIRECTV and DISH Network . . . petitioned the Supreme Court to review the question of whether businesses are ‘similarly situated‘ for Commerce Clause purposes if they directly compete in a relevant market.

SIIA argues that the Supremacy Clause of the U.S. Constitution and ERISA's preemption provision, prohibit the application of the Michigan Health Insurance Claims Assessment Act to ERISA-covered entities.

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

THOMSON REUTERS CHECKPOINT