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U.S. Supreme Court Update

U.S. SUPREME COURT UPDATE

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Court Receives New Cert Petitions in State and Local Tax Matters

***41** The U.S. Supreme Court has received two new petitions for certiorari in cases involving state and local taxes. The first, *Southern California Edison v. State of Nevada Dep't of Taxation* (Docket No. 17-755), involves the question of whether aNevada utility company must demonstrate the existence of substantially similar in-state entities before it can properly claim a refund of use taxes that the Nevada Supreme Court has deemed unconstitutional. Second, in *Wayne Cnty. Sch. Dist. v. Morgan* (DocketNo. 17-827), the Court has been asked to consider whether Mississippi's methods for calculating interest on overpayments violates taxpayers' rights under the Takings, Due Process, or Equal Protection Clauses of the U.S. Constitution.

In addition, the Court has already denied a recently filed (and previously unreported) petition, in *City of Austin v. Reagan National Advertising* (Docket No. 17-817), in which the Court was asked to consider whether the City ofAustin's billboard registration fee qualifies as an unconstitutional tax. We cover the denial of this petition in detail below.

In addition to these new petitions for certiorari, four previously reported petitions remained pending as the time of this writing. Also, the Court still remains set to review a dispute between Delaware and several other states concerning which states havepriority rights to claim abandoned, uncashed MoneyGram ‘official checks.‘ The MoneyGram cases set for review are *Delaware v. Pennsylvania et. al.*, Case No. 220145, and *Arkansas et. al. v. Delaware*, Case No. 220146.The Court has assigned the Honorable Pierre N. Leval, of the U.S. Court of Appeals for the Second Circuit, as Special Master in these cases, tasked with coordinating the taking of evidence and making reports. (The Court typically assigns original jurisdictiondisputes—cases such as disputes between states that are first heard at the Supreme Court level—to a Special Master to conduct what amounts to a trial court proceeding.) We will continue to update readersas more details become available.

****2** Lastly, the Court has denied two previously reported petitions.

Utility Company Challenges Refund Requirements for Unconstitutional Nevada Use Taxes

On 11/21/17, the Court received a new petition for certiorari in *Southern California Edison v. State of Nevada Dep't of Taxation,* Docket No. 17-755, ruling below at 398 P.3d 896 (Nev. 2017). In this case, the Supreme Court of Nevada held that although

Nevada's use tax on minerals mined outside of the state violated the dormant Commerce Clause of the U.S. Constitution, the taxpayer, a coal energy company,was properly denied a $23.8 million refund of taxes paid because it failed to demonstrate the existence of substantially similar in-state entities that had gained a competitive advantage because of the unconstitutional tax.

Nevada's unconstitutional use tax.

As explained by the state high court, Nevada law previously imposed a use tax exclusively on sources of energy extracted outside of Nevada, including coal, oil, natural gas, and geothermal steam, while exempting from the tax those sources of energy extractedfrom inside Nevada. The proceeds of minerals mined in Nevada were instead subject to a separate net proceeds tax, which resulted in an effective tax rate applicable to mining operations inside Nevada that was roughly 1%, while the effective tax rate for resourcesextracted and brought into Nevada was roughly 6%-7%.

In proceedings brought by Southern California Edison to obtain a refund of over $23 million in Nevada use tax, a Nevada district court held that Nevada's differential taxation of domestic and out-of-state minerals ‘facially discriminates against interstatecommerce‘ and violates the dormant Commerce Clause. The district court relied primarily on the Nevada Supreme Court's ruling in a related case, *Sierra Pacific Power Co. v. State Department of Taxation*, 338 P.3d 1244 (Nev. 2014), in which the court concluded that Nevada's tax was unconstitutional.

The court in *Sierra Pacific* also held, however, that ‘violations of the dormant Commerce Clause are remedied by compensating for the negative impact to the ***42** claimant as measured by the unfair advantage provided to the claimant's competitors.‘In other words, the court found that in cases where no competitor was favored by an unfair tax advantage, no tax refund was due, regardless of the constitutionality of the law in question.

Following the *Sierra Pacific* decision, the Nevada Department of Taxation conceded in the current action that ‘the District Court acted properly in finding the exemption in [Nevada Rev. Stat.] 372.270 facially discriminatory andtherefore invalid.‘ Accordingly, the Nevada Supreme Court was left only to decide whether there were ‘substantially similar‘ entities in Nevada, such that Southern California Edison was competitively disadvantaged by the unconstitutional tax.

Taxpayer fails to demonstrate ‘substantially similar favored competitors.‘

****3** In reviewing Southern California Edison's refund claim, the Nevada Supreme Court concluded that Edison is ‘not owed a refund because Edison has not demonstrated the existence of substantially similar entities that gained a competitive advantage becauseof the unconstitutional tax.‘

Citing to its prior decision in *Sierra Pacific*, the Nevada court held that, as the injured party, Southern California Edison must ‘demonstrate the existence of favored competitors—*i.e.,* ‘competitors who benefitedfrom the discriminatory tax scheme’—for a monetary remedy to attach.‘ Moreover, the court noted that the ‘favored competitor‘ must qualify as a ‘substantially similar entity‘ and that ‘competitive markets are narrowly drawn‘when addressing dormant Commerce Clause violations.

With regard to the use taxes paid by Southern California Edison, the court explained that the taxpayer did not have substantially similar advantaged competitors because Nevada mines do not produce commercially viable qualities or quantities of coal (themineral input upon which Southern California Edison paid its tax), and thus any direct competitors would also have had to purchase their coal inputs from out of state and pay the required use tax. Southern California Edison argued that producers of ‘geothermal,oil, and natural gas resources‘ who mined these materials within Nevada (thereby avoiding the use tax) were ‘substantially similar to coal energy providers.‘ Specifically, Southern California Edison noted that ‘geothermal, oil, and naturalgas power plants provide the same homogeneous commoditized output as coal power plants—electrical energy,‘ and that ‘all energy producers compete against each other regardless of the fuel source.‘The Nevada Supreme Court disagreed, however, with the taxpayer's analysis.

Instead, the court held that determining the market based on energy outputs, as opposed to inputs, would lead to an overbroad market where competitors are not similar. Accordingly, the court concluded that '[b]ecause Edison failed to demonstratethe existence of substantially similar advantaged competitors, and a violation of the dormant Commerce Clause requires that there be 'a competitor who benefited from the discriminatory tax scheme for the injured party to merit a monetary remedy,' weconclude that Edison is not entitled to any refund of use tax paid.'

Question presented.

In its petition for certiorari, Southern California Edison notes that in ***43** *McKesson Corp. v Division of Alcoholic Beverages & Tobacco, Dep't of Business Reg.*, 496 U.S. 18 (1990), the U.S. Supreme Court 'held that a taxpayer is entitled to meaningful post-deprivation relief when it has paid taxes found to discriminate against interstate commerce in violation of the dormant Commerce Clause.'The taxpayer further cites to the U.S. Supreme Court's decision in *General Motors v. Tracy*, 519 U.S. 278 (1997), and states that the Court 'elaborated that the notion of discrimination with which the dormant Commerce Clause is concerned assumes a comparison of substantially similar entities.' Finally, the taxpayer arguesthat '[t]wenty years later, the lower courts are sharply divided over what a taxpayer must prove to show that a state law discriminates against interstate commerce in a way that favors one 'substantially similar' entity over the other andtherefore entitles the disfavored party to a remedy.' Thus, the question presented in Southern California Edison's petition for certiorari is: 'Whether proof that a tax scheme violates the dormant Commerce Clause by favoring in-state interests overout-of-state interests, and thereby advantages some competitors over others within the same market, is sufficient to entitle the disfavored competitors to a remedy?'

Miss. School District Requests Additional Interest on Overpayment of Severance Taxes

****4** On 11/15/17, the Court received a petition for certiorari in *Wayne Cnty. Sch. Dist. v. Morgan,* Docket No. 17-827, ruling below at *Wayne Cnty. Sch. Dist. v. Morgan*, 224 So. 3d 539 (Miss. 2017), in which the Mississippi Supreme Court held that the chancery court correctly applied Miss. Code Ann. §27-65-53 when it determined interest owed to a school district on its overpayment of severance taxes atthe rate of 1% per month.

Factual background.

As explained in the case below, on October 7, 2008, the Wayne County School District filed a claim for refund of oil and gas severance taxes paid to the Mississippi Department of Revenue, which the Department initially denied. The taxpayer later supplementedits claim on June 7, 2011, and April 10, 2013, requesting a total refund in the amount of $2,345,560. While the taxpayer's claim was pending, the Mississippi Supreme Court decided *Jones v. County Sch. Dist. v. Dep't of Revenue*, 111 So. 3d 588 (Miss. 2013), which held that school districts are not liable for oil and gas severance taxes and no statute of limitations applies to the school districts' refund claims.

Following the decision in *Jones,* the Department accepted the Wayne County School District's claim and issued a refund to the taxpayer. The Department initially refused to pay any interest on this overpayment. The taxpayer responded by filinga Complaint for Declaratory Judgment, arguing it was entitled to interest on its severance tax overpayments at the rate of 1% per month beginning 90 days after it filed each of its applications for refund.

In relevant part, Mississippi's refund interest statute (Miss. Code Ann. §27-65-53; the 'Refund Interest Statute') requires the Department to pay interest only if it fails to issue a complete refund within 90 days after the later of either (1) the datethe application is submitted, or (2) the date the Commissioner determines a refund is due.

Interest on refund begins 90 days from decision that sanctions refund.

At the hearing before the Wayne County Chancery Court, the Department abandoned its initial position (no interest being due) and argued that the state's 1% interest accrual did not start running until after the Mississippi Supreme Court's decision in *Jones*. TheWayne County School District disagreed, however, arguing that the language of the statute did not allow for deferring the start date for interest on a tax overpayment to the date that a court determined there was an overpayment to be refunded. The chancelloragreed with the Department's position asserted at the hearing and ordered the Department to pay interest for the period beginning 90 days after the opinion in *Jones* was issued.

The Wayne County School District appealed to the Mississippi Supreme Court. However, the court sided with the Department, holding that the plain and unambiguous language of the Refund Interest Statute gave the Department discretion, without any restrictions,to determine when interest on a tax overpayment starts.

****5 *44** Thus, the Mississippi Supreme Court upheld the ruling by the chancellor that ordered the Department to pay interest beginning 90 days from the date of the decision in *Jones*.

Question presented.

In its petition for certiorari, the taxpayer argues that the Refund Interest Statute, ‘as interpreted by the Mississippi Supreme Court, would appear to violate the Takings Clause and/or the Due Process Clause of the Fifth and Fourteenth Amendments ofthe United States Constitution by granting an administrative agency unfettered discretion to deprive or take monetary interest on a taxpayer's overpayment of tax without the capability of any real judicial review of the agency's action.‘ In addition, thetaxpayer argues that the state court's interpretation ‘would also allow for unequal treatment of similarly situated taxpayers in violation of the Fourteenth Amendment's Equal Protection Clause.‘

Accordingly, the taxpayer asks the Court to consider ‘[w]hether a State statute interpreted by the State's highest court as vesting in the State's tax administrative agency the arbitrary and unrestricted discretion to determine how much, ifany, monetary interest is owed to a taxpayer on a tax overpayment is unconstitutional because it is in violation of: (i) the Takings Clause of the Fifth Amendment made applicable to the States by the Fourteenth Amendment, (ii) the Due Process Clause of theFourteenth Amendment, and/or (iii) the Equal Protection Clause of the Fourteenth Amendment.‘

Petitions Pending

The following four previously reported petitions for certiorari remained pending before the Court at the time of this writing.

Washington asks Court to overturn Yakama Nation ‘right to travel‘ without taxation victory.

On 6/14/17, the Court received a petition for certiorari in *Washington State Dep't of Licensing v. Cougar Den, Inc.*, Docket No 16-1498, ruling below at 188 Wash. 2d 55 (Wash. 2017), in which the Supreme Court of Washington held that the Yakama Nation ‘tribe[] w[as] entitled under [the Yakama Nation] [T]reaty to import fuel without holding [an]

importer's license and without paying state fuel taxes.‘

As explained by the court below, Article II of the Yakama Nation Treaty of 1855 states, in relevant part: ‘[I]f necessary for the public convenience, roads may be run through the said reservation; and on the other hand, the right of way, withfree access from the same to the nearest public highway, is secured them; as also the right, in common with citizens of the United States, to travel upon all public highways.‘ (Treaty with the Yakamas, 12 Stat. 951, 952-953 (1855)).

In 2013, Cougar Den, a Confederated Tribes and Bands of the Yakama Nation corporation, began transporting fuel from Oregon to the Yakama Indian Reservation. The company sold the fuel to businesses located on Tribal land and owned by Tribal members. The WashingtonDepartment of Licensing, however, issued tax assessments on the imported fuel ($3.6 million of taxes, penalties, and fees for hauling the fuel across state lines). Cougar Den refused to pay the assessment, arguing that the imposition of the tax violated itsright to travel under the Yakama Nation Treaty of 1855.

****6** In reviewing the assessment, and upholding the lower courts' ruling in Cougar Den's favor, the Washington Supreme Court noted that '[t]here is no dispute that the taxes and licensing requirements would apply if the treaty provision does notapply here.' The court further explained, however, that the U.S. Supreme Court's rule of treaty interpretation requires that 'Indian treaties must be interpreted as the Indians would have understood them.' The court concluded that '[t]heDepartment's interpretation of the treaty provision ignores the historical significance of travel to the Yakama Indians and the rule of treaty interpretation established by the United States Supreme Court. ' The court specifically noted that '[i]nruling in Cougar Den's favor, both the ALJ and the Yakima County Superior Court based their decisions on the history of the right to travel provision of the treaty, relying on the findings of fact and conclusionsof law from *Yakama Indian Nation v. Flores*, 955 F. Supp. 1229 (E.D. Wash. 1997),' in particular the depiction in the record of a 'tribal culture whose manner of existence was dependent on the Yakamas' ability to travel.'

The Washington State Department of Licensing now presents the U.S. Supreme Court with the following question for review in its petition for certiorari: 'Whether the Yakama Treaty of 1855 creates a right for tribal members to avoid state taxes on off-reservationcommercial activities that make use of public highways.'

Federal officer alleges W.Va.'s treatment of retirement benefits violates intergovernmental immunity.

On 9/19/17, the Court received a petition for certiorari in *Dawson v. Steager,* Docket No. 17-419, ruling below at *Steager v. Dawson*, 2017 WL 2172006 (W. Va. 2017), in which the Supreme Court of Appeals of West Virginia held thatMr. Dawson, a retired U.S. Marshal, was not entitled to an exemption for all of his Federal Employee Retirement System ('FERS') income from state income tax.

According to the court, James Dawson ('Dawson') worked as a deputy U.S. Marshal in West Virginia. Dawson was enrolled in FERS, a federal retirement plan, and sought a West Virginia exemption for all of his FERS income. Under West Virginia law, however,the court held that, unlike certain state law enforcement retirees who may exempt all of their state ***45** retirement benefits from taxable income, Dawson was entitled to exempt only a portion of his FERS income. The Supreme Court of Appeals of West Virginia heldthat this distinction did not violate the doctrine of 'intergovernmental tax immunity.'

According to the court, 'the total structure of West Virginia's system for taxing personal income does not discriminate against retired members of the United States Marshals Service in violation of 4U.S.C. §111.' Instead, the court held the exemption at issue merely gives a benefit to 'a very narrow class of former state and local employees, and that benefit was not intended to discriminate against former federal marshals.'

****7** Dawson now asks the U.S. Supreme Court to consider the following question for review: 'Whether this Court's precedent and the doctrine of intergovernmental tax immunity bar states from exempting groups of state retirees from state income tax while discriminatingagainst similarly situated federal retirees based on the source of their retirement income.' On Jan. 8, 2018, the Court invited the Solicitor General to file a brief in this case expressing the views of the United States.

Court receives request to overturn *Quill's* physical presence test.

On 10/2/17, the Court received a closely watched petition for certiorari in *South Dakota v. Wayfair, Inc., et. al.*, Docket No. 17-494, ruling below at 901 N.W.2d 754 (S.D. 2017), in which the Supreme Court of South Dakota held that a South Dakota law requiring Internet sellers with no physical presence in South Dakota to collect and remit sales tax violated the dormant Commerce Clause ofthe U.S. Constitution.

In its petition for certiorari, South Dakota provides the following broad reasons as to why the U.S. Supreme Court should reconsider and overrule its decision in *Quill Corp. v. North Dakota,* 504 U.S. 298 (1992). First, South Dakota argues that, under contemporary conditions, *Quill's* rule is harmful to local governments, brick-and-mortar businesses, and to interstate commerce itself. Local governments are harmed, thestate argues, by losing substantial amounts of revenue. South Dakota also warns that *Quill* harms brick-and-mortar businesses by providing online sellers a functioning tax subsidy that creates an unfair economic playing field. And, according toSouth Dakota, interstate commerce itself is burdened because *Quill* effectively discourages businesses from investing in jobs or infrastructure in states beyond their principal place of business, for fear of developing a physical presence nexus.

The state also argues that *Quill* is not only incorrect, but that the ruling is the kind of mistake that should not be reinforced due to *stare decisis.* According to South Dakota, the benefits of a physical presence rule are not onlyillusory, but the rule itself is not supported by the text of the U.S. Constitution. Instead, the state argues that courts should apply the *Complete Auto* test to determine whether sales tax laws are constitutional.

In asking the Court to revisit its prior rulings, and potentially alter the sales and use tax nexus landscape, South Dakota now presents the following question for review: ‘Should this Court abrogate *Quill*'s sales-tax-only, physical presencerequirement?‘

Trust beneficiaries allege Connecticut's imposition of estate tax violates the Due Process Clause.

On 10/24/17, the Court received a petition for certiorari in ***46** *Estate of Brooks, et. al. v. Connecticut Comm'r of Rev. Services,* Docket No. 17-608, ruling below at 159 A.3d 1149 (Conn. 2017), in which the Connecticut Supreme Court held that the Due Process Clause was not violated when Connecticut imposed an estate tax on trust assets that were transferred to a Connecticut decedent by her predeceasedspouse, who died a domiciliary of another state. The assets at issue were held in a qualified terminable interest property (‘QTIP‘) marital deduction trust.

****8** In framing their arguments to the Court, the beneficiaries present the following two questions for review:

1. Can a state impose an estate tax on the termination of an income interest in a trust solely on the basis that a federal election to qualify such trust for the federal marital deduction was made in the estate of the decedent's predeceased spouse, whensuch predeceased spouse died a domiciliary of another state?

2. Is retroactive tax legislation permissible under the Due Process Clause when (i) the retroactive legislation causes a statute to become unconstitutional in some circumstances; (ii) there is no ambiguity in the needs to be corrected; (ii) no proofhas been offered to established that the legislative intent is furthered by rational means; (iv) the retroactive period exceeds the year prior to the legislative sessions in which the law was enacted; or (v) the evidence indicated that the legislation hastargeted the taxpayer specifically.

Petitions Denied

The Court has denied two previously reported petitions and one recently filed (and previously unreported) decision, which is discussed in detail below.

The Court denied the previously reported petition in *ETC Marketing, Ltd. v. Harris County Appraisal Dist.*, Docket No. 17-422, ruling below at *ETC Marketing, Ltd. v. Harris County Appraisal Dist.*, 518 S.W.3d 371 (Tex. 2017). In the case below, the Supreme Court of Texas held that ETC Marketing, Ltd. must pay the state's ad valorem property tax on surplus gas held for future resale, which the court held does not violate the federal CommerceClause. The taxpayer had alleged in its petition for certiorari that localities may not tax natural gas that is temporarily stored in the course of interstate transit without violating the Commerce Clause because the storage of gas was integral to, not separatefrom, gas transportation. Based on its allegations, the taxpayer had asked the U.S. Supreme Court to consider whether, ‘States may tax natural gas that is temporarily stored in the course of interstate transit?‘

The Court also denied the previously reported petition in *Echostar Satellite LLC v. State of Florida,* Docket No. 17-379, ruling below at *Florida Department of Revenue v. DirectTV, Inc.* 215 So. 3d 46 (Fla. 2017). In the case below, the Supreme Court of Florida held that Florida's Communications Services Tax (‘CST‘) did not violate the U.S. Constitution's Commerce Clause, despite applying a lower rate to cable servicethan to satellite service. According to the Florida Supreme Court, ‘[c]able companies are not in-state interests for the purpose of the dormant Commerce Clause.‘ Instead, the Florida Supreme Court found that both cable providers and satelliteproviders are ‘interstate in nature.‘ The court below went on to note that a state may ‘treat ‘two categories of companies' differently so long as the discrimination is based on ‘differences between the nature of their businesses' andnot ‘the location of their ***47** activities.’‘ The petition filed with the U.S. Supreme Court by Echostar Satellite LLC had challenged both the lower court's ‘in-state interests‘ analysis and had raiseda discriminatory purpose claim.

Texas city challenged preclusion of litigating billboard registration fees.

****9** On 1/8/18, the Court denied a previously unreported petition that it had received on 11/30/17, in *Austin v. Reagan National Advertising,* Docket No. 17-817, ruling below at *Reagan National Advertising v. City of Austin et al.,* 498 S.W.3d 236 (Tex. Ct. App. 2017). In this case, the Court of Appeals for the Third District of Texas ruled that the City of Austin's billboard registration fee qualifies as an unconstitutional occupation tax. A federal district court previouslyhad dismissed the taxpayer's challenge to the registration fee under the federal Tax Injunction Act. The Texas appellate court found that this federal court decision preclusively determined that the billboard fee was a tax under Texas law, and therefore itwas invalid under the state's constitution. The Supreme Court of Texas denied the city's petition for review. Thus, the city had asked the U.S. Supreme Court to determine whether Texas state courts are bound by federal court determinations as to which stateand local impositions qualify as taxes.

Austin's billboard registration and fees: According to the rulings below, Texas law authorizes the City of Austin (‘Austin‘) to regulate billboards and other off-premise signs located within city limits. Under this authority, Austinrequires billboards be registered with its Code Compliance Department and registrants must pay Austin a fee to help defray inspection and other costs associated with billboard regulation.

The taxpayer in the cases below, Reagan National Advertising (‘Reagan‘), is an outdoor advertising company that owns and operates a majority of the billboards in Austin. Since being first required to pay Austin's billboard registration fees in 2009,Reagan has done so under protest, from 2009 through 2014 (the years at issue in the appeal).

Federal court dismisses taxpayer challenge under TIA: In 2010, Reagan first sued the city in federal court, challenging Austin's billboard registration fee by arguing that the fee imposed was actually a tax, which was invalid under the TexasState Constitution. The premise of Reagan's claim was that the fees were taxes because the revenue generated by the fees substantially exceeded the regulatory costs to Austin, and the Texas Constitution limits local occupation taxes to one-half the rate ofthe occupation taxes levied by the state on the same activity. Because Texas does not levy a state occupation tax on billboard operators, Reagan claimed in its federal suit that Austin's fees exceeded the state's constitutional limit.

The federal district court responded to Reagan's claim by raising an issue of subject matter jurisdiction *sua sponte* and held that no such jurisdiction existed under the federal Tax Injunction Act, which limits federal courts' ability to hearcases concerning any tax under state law where a ‘plain, speedy and efficient remedy may be had in the courts of such State.‘ Accordingly, the federal

court dismissed the case, while ruling that a ‘dismissal for lack of subject-matter jurisdictionis not a merits determination, and therefore cannot have *res judicata* effect.‘

****10 Texas court follows federal determination and treats registration fee as tax:** Following the dismissal of its federal case, Reagan filed suit in Texas district court. There, the trial court found, as a fact, that the billboard fee ‘is basedon the City's costs for actual activities performed,‘ and therefore the billboard registrations qualified as fees and not as taxes.

Reagan appealed the district court's judgment and, on appeal, a Texas appellate court reversed the lower court's ruling. Framing the question as one of issue preclusion, rather than claim preclusion, the appeals court sought to determine ‘whether thefederal court's decision that the billboard assessment constitutes a tax has preclusive effects in state court,‘ which would resolve the issue as a matter of law. The appeals court answered its question in the affirmative and ruled that because a federalcourt had dismissed the case on the grounds that the registration fee was a tax, the fee was therefore a tax, which was impermissible under Texas's state constitution. Consequently, the court ordered Austin to repay Reagan the fees the city had received underprotest.

Question presented: Focusing on the issue of preclusion, the City of Austin had asked the U.S. Supreme Court ‘Whether a federal court's dismissal of a state tax law claim for lack of jurisdiction under the federal Tax Injunction Act maybe interposed as a matter of federal law to preclusively determine the same state tax law claim in a subsequent state case.‘

[The Nevada Supreme Court] found that in cases where no competitor was favored by an unfair tax advantage, no tax refund was due

The Mississippi Supreme Court [held] the Department [has] discretion, without any restrictions, to determine when interest on a tax overpayment starts.

[Austin] asked the U.S. Supreme Court to determine whether Texas state courts are bound by federal court determinations as to which state and local impositions qualify as taxes.

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