THOMSON REUTERS CHECKPOINT

25-NOV J. Multistate Tax'n 41

Journal of Multistate Taxation and Incentives
****1**
November/December, 2015

U.S. Supreme Court Update

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U.S. SUPREME COURT UPDATE

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Supreme Court Receives Three New Petitions for Certiorari

***41** In this issue of the JOURNAL, we discuss three new petitions for certiorari, each asking the Court to review issues related to state and local taxes. All three petitions, *Taylor v. Yee* (Docket No. 15-169), *Nelson v. Commissionerof Revenue* (Docket No. 15-62), and *Sierra Pacific Power Company v. Nevada* (Docket No. 15-25), involve due process challenges.

As reported in our last column, on 6/30/15, the Supreme Court granted a request for certiorari in *Franchise Tax Board of the State of California v. Hyatt* (Docket No. 14-1175). As we go to press, we still await the scheduling oforal arguments in this case, in which the California Franchise Tax Board has asked the Court to review Nevada's refusal to extend principles of discretionary-function immunity and comity to shield the Board from a multi-million dollar lawsuit in Nevada courts.

Finally, we note that five previously reported petitions remain pending before the Court.

'As Applied' Due Process Challenge to California's Unclaimed Property Laws

In *Taylor v. Yee*, Docket No. 15-169, petition for cert. filed 8/05/15, 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 State Controller did not violate the Due Process Clause in administering the UPL. Specifically, it foundthat 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 informationfrom all state agency databases.

The Ninth Circuit Court of Appeals described this class action lawsuit as having a 'long and tortuous history in this Court,' and named its opinion Taylor V, as a result of the court's prior decisions in this matter. (In the prior cases, the Ninth Circuitupheld the facial constitutionality of the law.)

Notice requirements under California's Unclaimed Property Law.

****2** Under California's UPL, property that appears to be lost or abandoned by the owner is conditionally transferred to the state if it remains unclaimed after notice is provided to the owner. As restated by the Court of Appeals, the California Controller hasdescribed the purpose of the UPL as a method to 'locate owners of apparently lost or abandoned property and restore their property to them; but if these efforts are unsuccessful, to give the benefit of any unclaimed property to California, rather thanfinancial institutions or other private entities holding the property ('holders').'

Before property can be transferred to and held by the state, however, the UPL requires that multiple forms of notice be given to the apparent owners of unclaimed property. These notice requirements include both pre-escheat (i.e., before the property istransferred to the state) and post-escheat (i.e., after the property is transferred to the state) forms of notice.

Pre-escheat, section 1531 of the UPL requires the Controller to mail a notice to the apparent owner, explaining that unclaimed property will be placed in the custody of the state. Usually, the Controller's notice is mailed to the owner's address as providedby the holder of the property, but, when a Social Security number is available, the UPL also requires the Controller to attempt to verify the owner's address by reviewing records on file with the California Franchise Tax Board (FTB). The Controller is alsodirected to provide notice via publication in a newspaper of general circulation.

In an earlier case before the Ninth Circuit, the circuit court found that these pre-escheat forms of notice (i.e., the UPL as amended in 2007) were facially constitutional. Specifically, the court held that the requirements 'pass[ed] constitutionalmuster because the State, in addition to the holder, 'is required to provide . . . notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present theirobjections.'' As explained in more detail below, however, the taxpayers now maintain that the Controller is unconstitutionally applying these notice requirements by failing to make use of additional, post-escheat forms of notice that are available tothe state.

Post-escheat—i.e., after the Controller receives unclaimed property—section 1531.5 of the UPL permits all of California's state and local governmental agencies to, upon request of the Comptroller, provide information from their databases thatcould be used to locate owners of unclaimed property. In other words, while pre-escheat notice mandates that the Controller verify a potential property owner's address with the FTB, post-escheat notice allows, but does not require, a review of all availablegovernment databases.

Taxpayers' claim of inadequate notice.

***42** The taxpayers argued that the California Controller administered the UPL in a way that violated their due process rights as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution. Specifically, the taxpayers alleged that the Controller'sfailure to utilize the additional data available under section 1531.5 violated their due process rights.

****3** The Ninth Circuit Court of Appeals, however, found that the taxpayers had incorrectly interpreted section 1531.5. Despite the taxpayers' claims, the court noted that section 1531.5 does not require the Controller to search additional government databaseswhen generating *pre*-escheat notices. Instead, section 1531.5 applies *post*-escheat. Moreover, the court stated that it did not rely on section 1531.5 in its prior ruling that upheld the facial constitutionality of the UPL. Thus, therewas no requirement for the Controller to utilize section 1531.5 in pre-escheat notice proceedings.

Although the court conceded that the taxpayers' suggested requirement 'may, of course, lead to more claims [for unclaimed property] being filed,' the additional step, according to the court, 'exceeds the minimum due process requirements.'Thus, the court concluded that the Controller was not required, either by the Due Process Clause or section 1531.5, to go as far as the taxpayers suggested.

Questions for review.

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In their petition for certiorari, the taxpayers cite to the U.S. Supreme Court's recent decision in *Horne v. Department of Agriculture*, in which the Court held that the U.S. Government had violated raisin growers' constitutional rights underthe 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 '[w]hether, the Ninth Circuit's judgment in this caseshould be [vacated and remanded] in light of *Horne v . Department of Agriculture,* No. 14-275, 135 S. Ct. 2419 (June 22, 2015)?'

Alternatively, the taxpayers ask the Court to consider '[w]hether the California Unclaimed Property Law, Cal. Civ. Proc. Code §§ 1300, et seq., violates the Due Process Clause of the Fourteenth Amendment because it deprives owners oftheir property without affording constitutionally adequate notice.'

Minnesota's Right to Enforce a Tax Judgment in California

In *Nelson v. Commissioner of Revenue*, Docket No. 15-62, petition for cert. filed 7/13/15, ruling below as *Commissioner of Revenue State of Minnesota v. Nelson*, No. B251215 (Cal. Ct. App. 1/06/15), *rev. denied*,No. S224461 (Cal. 4/15/2015), a California taxpayer seeks 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 gasstations, contends 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 Californiacourts.

Background.

Bruce Nelson, who now petitions the Supreme Court for review, owned an 85 percent interest in RM Group, Inc., which controlled two subsidiaries—Twin Cities Avanti Stores, LLC (Avanti) and Twin Cities Stores, Inc. (Twin Cities)—that owned andoperated gas stations in several states, including Minnesota. When Avanti failed to remit over $4 million in petroleum and sales taxes to the Minnesota Department of Revenue (the 'Department') for products sold by the gas stations, the Department filedliens against Avanti.

****4** Although the liens were initially filed against Avanti only, the Department later filed liens against Twin Cities on the grounds that Twin Cities also sold some of the petroleum products at issue. As relevant to Nelson's current appeal, however, the Departmenteventually lifted the liens against Twin Cities during a subsequent bankruptcy proceeding involving the related entities.

According to the California Court of Appeals, a Department representative testified at the time that he did know why the Twin Cities liens were removed. Nelson, however, argued that the effect of their removal was that his individual exposure for the unpaidtaxes increased (the courts below disputed this claim). Nelson, therefore, filed an appeal with the Minnesota Tax Court, seeking to avoid an assessment against him personally. During his appeal, Nelson served the Minnesota Commissioner of Revenue (the 'Commissioner')with discovery requests, seeking the identities of all Department officials and third parties who were involved in the decision to file and then withdraw the liens against Twin Cities.

The Commissioner responded to Nelson's request with certain information, but, according to the Court of Appeals, Nelson remained unsatisfied and filed a motion with the Minnesota Tax Court to compel discovery. Nelson argued that he relied on the Department'sfiling of tax liens against Twin Cities' assets, which, in his view, would have permitted him to avoid personal liability for a portion of the unpaid taxes. He argued, therefore, that the Commissioner should be equitably estopped from seeking payment fromhim individually.

The Department responded to Nelson's claims by moving for summary judgment, and the Tax Court granted the Commissioner's motion, ruling that Nelson was personally liable for the unpaid petroleum taxes. The Tax Court specifically rejected Nelson's

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estoppelclaim on the ground that 'estoppel is not an available remedy because the Commissioner did not misrepresent [the taxpayer's] personal liability nor did the [taxpayer] reasonably rely on any such alleged misrepresentation.'

The Minnesota Tax Court's decision was then upheld by the Minnesota Supreme Court, where the court noted that 'Nelson . . . submitted no evidence to suggest that the Department misrepresented anything regarding its lien filings to induce the [taxpayer]

to believe that [he was] not personally liable for Avanti's tax liabilities. ' As noted by the California courts, Nelson made no due process claim before the Minnesota Supreme Court.

Entry of a sister state judgment—full faith and credit.

Following the Minnesota Supreme Court's decision, the Commissioner filed an Application for Entry on Sister State Judgment in Santa Barbara Superior Court. The California court entered a judgment for over $4 million, which Nelson moved to vacate. In hismotion, Nelson argued that he was not afforded due process of law because the Minnesota Tax Court and the Minnesota Supreme Court refused to permit him to conduct discovery he characterized as essential to his defense of estoppel.

****5** The Santa Barbara Superior Court concluded that the Minnesota Supreme Court foreclosed Nelson's argument that he was ***44** denied due process and, therefore, denied his motion to vacate the judgment. On appeal, the California Court of Appeals agreed. As restatedby the court, article IV, section 1, of the U.S. Constitution provides that courts shall accord full faith and credit to a judgment of a sister state unless the rendering court lacked jurisdiction. In other words, the permissible scope of inquiry by the sisterstate is limited to a determination of whether the forum court had jurisdiction over the parties and the subject matter, which was 'plainly the case here.'

Although Nelson pointed to a California statute that provides that sister state judgments 'may be vacated on any ground which would be a defense to an action in this state on the sister state judgment,' Nelson's motion did not reach any of the defenseslisted under that statute. Contrary to Nelson's arguments, the court noted that 'differing policies about the discovery available to litigants cannot contravene the full faith and credit clause of the Constitution.' The court, therefore, affirmed theorder denying Nelson's motion to vacate the Minnesota judgment.

Questions presented.

In his petition for review, Nelson argues that '[i]n light of the fact that the underlying Minnesota tax judgment was rendered in violation of due process, it should not have been entitled to full faith and credit in California or any othersister state.'

Nelson presents the Court with the following two questions for review: '1. Whether the Due Process Clause of the United State Constitution accords litigants the right to obtain discovery in judicial proceedings[; and] 2. Whether a sister statejudgment should be afforded full faith and credit when litigant's request for leave to issue discovery in tax court proceeding was denied.'

Due Process Challenge to Denial of Refund for Taxes Paid Under A Facially Unconstitutional Tax Statute

In *Sierra Pacific Power Company 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 notentitled 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 foundthat 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, so it was lawfully assessed.

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The unconstitutional provision.

As restated by the Nevada court below, Chapter 372 of the Nevada Revised Statutes mandates that taxpayers pay a use tax on property—including coal and other minerals—purchased outside of Nevada that is subsequently used or consumed in the state.Section 372.270 of the state's sales and use tax laws, however, exempts from the use tax the sale, storage, or use of the proceeds of Nevada mines. In other words, NV Energy and its subsidiaries, who bring coal from outside of the state into Nevada to produceelectricity, must pay the use tax, whereas an energy company that purchased locally mined minerals would not pay the tax.

****6** Before reaching the Nevada Supreme Court, a state district court found, and neither party disputed on appeal, that the exemption provided under section 372.270 violates the dormant Commerce Clause of the U.S. Constitution, which prevents states from unlawfullydiscriminating against interstate commerce. The Nevada Supreme Court did not, therefore, revisit the constitutionality of section 372.270's exemption, but rather the court addressed two related issues: (1) whether the offending language in section 372.270is severable, and (2) whether NV Energy is entitled to a refund for taxes paid under the statute.

NV Energy argued that because section 372.270's exemption for locally produced mine and mineral proceeds discriminates against interstate commerce in violation of the dormant Commerce Clause, the exemption should, therefore, apply broadly to all such miningproceeds, regardless of the location of their extraction. Accordingly, NV Energy petitioned the Nevada Department of Taxation for a $25 million refund for the use taxes it paid on coal purchased during the years at issue.

Unconstitutional language is not severable from the statute.

Section 372.270 provides in its entirety that ‘[t]here are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption in this state of, the proceeds of mines which are subjectto taxes levied pursuant to chapter 362 of NRS.‘ The contested language (i.e., the language NV Energy sought to remove) was the final clause: ‘which are subject to taxes levied pursuant to chapter 362 of NRS.‘ By removing this language, NV Energyargued, the statute would no longer discriminate against interstate commerce.

***46** Although the Nevada Supreme Court acknowledged the severability doctrine, which ‘obligates the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional provisions,‘ the court notedthat not all statutory language was severable. And according to the court, ‘[b]efore language can be severed from a statute, a court must first determine whether the remainder of the statute, standing alone, can be given legal effect, and whetherpreserving the remaining portion of the statute accords with legislative intent.‘

The court determined that section 372.270 could still be given legal effect if severed—‘the statute would continue to provide an exemption, albeit for all mine proceeds regardless of the mine's location‘—but the court found that such a resultwould undermine the purpose of the statute. Specifically, the court noted that the purpose of the exemption under section 372.270 was narrowly tailored to avoid taxing the proceeds of mines already subject to a separate net proceeds tax under chapter 362 ofthe Nevada Revised Statutes. The exemption was not meant to exempt entire categories of products from the use tax. And ‘such a result would not be in accord with the Legislature's intent in enacting the exemption.‘ Thus, the Nevada Supreme Court heldthat it was proper to strike section 372.270 in its entirety.

NV Energy is not entitled to a refund.

****7** As stated by the Nevada Supreme Court, ‘[s]tate courts have the duty of determining the appropriate relief for Commerce Clause violations, and, to satisfy due process requirements, courts must provide ‘meaningful backward-looking relief'to correct taxes paid pursuant to an unconstitutional scheme. ‘ As discussed above, NV Energy paid taxes collected under

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an unconstitutional tax provision, and the energy company, therefore, argued in the case below that a refund was the only appropriateremedy. The Nevada Supreme Court, however, disagreed. According to the court, '[i]t has long been held that a refund is merely one remedy; other remedies will equally satisfy due process.'

Specifically, the court found that a refund is generally not merited where there has been no actual injury. And citing to various U.S. Supreme Court decisions, including *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18 (1990) and *Iowa-Des Moines National Bank v. Bennett*, 284 U.S. 239 (1931), the Nevada Supreme Court held that there is a 'requirement that the party injured by a dormant Commerce Clauseviolation must actually have a competitor who benefited from the discriminatory tax scheme for the injured party to merit a monetary remedy.'

According to the Nevada Supreme Court, NV Energy failed to demonstrate 'that the tax, as actually assessed, discriminates against interstate commerce. ' Specifically, the court cited to the fact that the energy company failed to show that it paid any highertax than did its competitors and that NV Energy's competitors also purchased coal out of state and paid use tax.

The court further stated that 'although the exemption to the use tax violates the dormant Commerce Clause, the use tax itself is not unconstitutional. ' Accordingly, the Nevada Supreme Court declined to grant NV Energy a refund of tax dollars thatit 'rightfully paid,' even though section 372.270 could have 'unconstitutionally exempted a hypothetical competitor from paying this same tax.'

Question for review.

NV Energy asks the U.S. Supreme Court to review the Nevada Supreme Court's holding. Specifically, NV Energy asks the Court the following: 'Does a state court violate 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 as established by this Court in *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco,* 496 U.S. 18, 31, 39, (1990), by holding that even though a challengedtax 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.'

Petition Granted

As reported in our last column, on 6/30/15, the Supreme Court partially granted the petition for certiorari in *Franchise Tax Board of the State of California v. Hyatt*, Docket No. 14-1175, ruling below at 335 P.3d 125 (Nev. 2014).In its petition for review, the California Franchise Tax Board (FTB) presented three questions for review: '[1] Whether the federal discretionary-function immunity rule, 28U.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; [and3] Whether *Nevada v. Hall*, 440 U.S. 410 (1979), which permits a sovereign State to be hauled into the courts of another State without its consent, should be overruled.' The Supreme Court has agreedto review the second and third questions above, and as this issue of the JOURNAL goes to press, we still await the scheduling of oral arguments.

****8** In the case 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 FTB. However, despite the FTB's claims thatall 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 auditof Hyatt. Accordingly—although the damages imposed against the FTB were significantly reduced by the Nevada court—the FTB was unable to escape all liability. (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).)

Petitions Still Pending

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

Satellite providers dormant Commerce Clause challenges. In *DIRECTV, LLC v. Massachusetts Department 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 '), petition theSupreme 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 ***48** the satellite providers were not similarly situated to cable providers and, therefore, that the satellite providers could not show that thestates' 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, 25JMT 39 (October 2015).)

Due Process Clause challenge to WA's retroactive application of estate tax laws. In *Hambleton v. Washington*, Docket No. 14-1436, petition for cert. filed 6/05/15, ruling below at 335 P.3d 398 (Wash. 2014), the Supreme Court of Washingtondenied 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 estatesclaimed 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. The estates now petition the Court to revisit that holding and to define the due process rights associatedwith retroactive tax laws. (For more background on this case, including a discussion of Washington's estate tax laws, see U.S. Supreme Court Update, 25 JMT 38 (September 2015).)

****9 Student loan lenders challenge MA's apportionment of income under the state's financial institution excise tax.** In *First Marblehead Corporation v. Massachusetts Commissioner of Revenue*,Docket No. 14-1422, petition for cert. filed 5/29/15, ruling below at 23 N.E.3d 892 (Mass. 2015), the Supreme Judicial Court of Massachusetts upheld a decision of the Appellate Tax Board (the 'Board'), which determined that all of a financial institution'sproperty—consisting exclusively of securitized student loans—was properly assigned to Massachusetts for purposes of the state's financial institution excise tax (FIET).

The financial institution now challenges the Massachusetts's ruling and, by invoking arguments from the U.S. Supreme Court's recent decision in *Comptroller of the Treasury v. Wynne*, claims that Massachusetts's apportionment scheme violates theCommerce Clause of the U.S. Constitution by failing both the internal and external consistency tests. (For more background on this case, including a detail discussion of the Massachusetts's ruling, see U.S. Supreme Court Update, 25JMT 38 (September 2015).)

ERISA preemption provision challenge to MI health insurance tax. In *Self-Insurance Institute 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 a1 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 preemptionprovision (29 U.S.C. § 1144(a)).

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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)) ‘ (emphasisadded). 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 theplans; (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.

****10** 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 preemptivelanguage 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, seeU.S. Supreme Court Update, 25 JMT 45 (May 2015).)

The taxpayers [in *Taylor v. Yee*] maintain that the California Controller is unconstitutionally applying notice requirements by failing to make use of additional, post-escheat forms of notice that are available to the state.

The court [in *Nelson*] noted that ‘differing policies about the discovery available to litigants cannot contravene the full faith and credit clause of the Constitution.‘

The Nevada Supreme Court [in *Sierra Pacific Power*] held that there is a ‘requirement that the party injured by a dormant Commerce Clause violation must actually have a competitor who benefited from the discriminatory tax schemefor the injured party to merit a monetary remedy.‘

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.

Both the Massachusetts Supreme Judicial Court and the Tennessee Court of Appeals found that the satellite providers were not similarly situated to cable providers.

The financial institution [in *First Marblehead Corp.*] . . . claims that Massachusetts's apportionment scheme violates the Commerce Clause of the U.S. Constitution by failing both the internal and external consistency tests.

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