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U.S. SUPREME COURT UPDATE

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Court Asked to Review Constitutionality of Colorado's Obligations Imposed on Out-of-State Retailers

***42** In this issue of the JOURNAL, we cover the next chapter in Direct Marketing Association's (‘DMA‘) long-running challenge to Colorado's notice and reporting obligations imposed on retailers that ‘do not collect Colorado sales tax.‘Regular readers of this column will recall that on 3/3/15, the U.S. Supreme Court unanimously determined that the Tax Injunction Act (‘TIA‘) did not preclude DMA from challenging the constitutionality of Colorado's laws in federal court.

The High Court reversed the U.S. Court of Appeals for the Tenth Circuit's original ruling that the TIA served as a jurisdictional bar to DMA's claims and remanded the case to the circuit court to address the merits of DMA's challenge. DMA now asks the SupremeCourt to review the latest ruling by the Tenth Circuit, in which the circuit court held that Colorado's notice and reporting obligations do not violate the dormant Commerce Clause of the U.S. Constitution because the law does not discriminate against or undulyburden interstate commerce.

As we go to press, we also note that six previously reported petitions (including two motions for leave to file bills of complaint) remain pending before the Court. Those pending petitions are also summarized below.

DMA Alleges Colorado's Requirements Unconstitutionally Discriminate Against and Unduly Burden Interstate Commerce

In *Direct Marketing Association v. Brohl*, Docket No. 16-267, petition for cert. filed 8/29/2016, ruling below at 814 F.3d 1129 (10th Cir. 2016), the DMA—a group of businesses and organizations that market products via remote channels,such as catalogs and the Internet—asks the U.S. Supreme Court to review a ruling by the U.S. Court of Appeals for the Tenth Circuit regarding the constitutionality of Colorado's notice and reporting requirements imposed on retailers that ‘do notcollect Colorado sales tax.‘

In the Tenth Circuit's ruling, the circuit court held that Colorado's law ‘does not violate the dormant Commerce Clause because it does not discriminate against or unduly burden interstate commerce.‘ The Tenth Circuit's decision reversed an earlierfederal district court's ruling, which granted DMA's motion for summary judgment regarding the unconstitutionality of Colorado's notice and reporting obligations and enjoined the Colorado Department of Revenue (‘CDOR ‘) from enforcing the law. DMA nowpetitions the U.S. Supreme Court to review the circuit court's ruling, alleging that, by finding the Colorado law did not

discriminate against interstate commerce, the Tenth Circuit wrongly relieved Colorado of its heavy burden of justifying, under the ‘strictestscrutiny,‘ the ‘patent discrimination‘ of the state's notice and reporting requirements.

Colorado's notice and reporting requirements.

****2** DMA's petition for certiorari stems from a 2010 Colorado law (the ‘Colorado Law‘) requiring remote retailers selling to in-state customers to comply with a number of notice and reporting obligations intended to improve the state's use tax collections.As with nearly all states that impose a sales tax, Colorado complements its sales tax with a use tax that is designed to prevent in-state consumers from purchasing products out-of-state in order to avoid paying Colorado sales tax.

In response to the elusive nature of use tax collection—where the onus is on the purchaser to report and pay the tax—the Colorado Legislature enacted statutory requirements in 2010 for out-of-state retailers who are not legally required to—andchoose not to—collect and remit tax on sales to Colorado purchasers. The Colorado Law, which applies to out-of-state, non-collecting retailers with gross Colorado sales in excess of $100,000, requires the retailers: (1) to provide transaction noticesto Colorado purchasers, reminding them of their obligation to file a sales or use tax return and to pay the tax owed; (2) to send annual purchase summaries to Colorado customers who purchased from the retailer more than $500 worth of goods in the precedingyear, again reminding the customers of their sales and use tax obligations; and (3) to annually report Colorado purchaser information to the CDOR that includes purchasers' names, addresses, and amounts purchased.(*See* Colo. Rev. Stat. § 39-21-112(3.5), added by H.B. 1193, § 2 (2/24/10).) Non-collecting retailers that do not comply with the notice and reporting obligations are subject to penalties.

Procedural history.

The long procedural history of DMA's challenge to the Colorado Law began in June 2010, when DMA sued the Executive Director of the CDOR in federal district court, challenging the facial constitutionality of the law's notice and reporting requirements. Asmentioned above, the district court originally granted DMA's motion for summary ***43** judgment, concluding that the requirements were unconstitutional under the dormant Commerce Clause. The district court then entered a permanent injunction prohibiting enforcementof the Colorado Law.

On appeal, however, the U.S. Court of Appeals for the Tenth Circuit held that the district court lacked jurisdiction to hear DMA's challenge under the Tax Injunction Act (‘TIA‘), a federal law that prohibits federal district courts from ‘enjoin[ing],suspend[ing] or restrain[ing] the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.‘ The Court of Appeals remanded the case back to the districtcourt to dismiss DMA's claims and dissolve the permanent injunction prohibiting enforcement of the Colorado Law.

In the wake of the Tenth Circuit's ruling, DMA sued the CDOR in state court and also petitioned the U.S. Supreme Court to review the circuit court's dismissal of its claims based on the TIA. On 3/3/15, the U.S. Supreme Court held that the TIA does not barfederal courts from hearing DMA's challenge and remanded the case to the Tenth Circuit for further proceedings (*see Direct Marketing Association v. Brohl*, 135 S. Ct. 1124 (2015) (‘*Brohl I*‘)). (For a more detailed discussionof the Supreme Court decision in *Brohl I*, see U.S. Supreme Court Update, 25 JMT 40 (July 2015).)

Tenth Circuit holds Colorado Law does not discriminate against interstate commerce.

****3** Hearing the case for a second time, the Tenth Circuit was asked whether the Colorado Law violates the dormant Commerce Clause because it either discriminates against or unduly burdens interstate commerce. With regard to DMA's discrimination claim, the circuitcourt noted that ‘[a]s a general matter, state regulation that discriminates against interstate commerce will survive constitutional challenge only if the state shows ‘it advances a legitimate local purpose that cannot be adequately servedby reasonable nondiscriminatory alternatives.’‘ (Citing *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 581,

117 S. Ct. 1590, 137 L. Ed.2d 852 (1997)). In other words, if a law discriminates against interstate commerce, itwill, according to the circuit court, only survive the ‘strictest scrutiny.‘

The Tenth Circuit, however, determined that DMA failed to carry its burden of showing that the Colorado Law discriminated against interstate commerce, either on its face or in its practical effects. (A statute may discriminate against interstate commerceon its face or in practical effect. If the party challenging the law meets its burden to show the law is discriminatory, the law ‘is virtually *per se* invalid.‘) Accordingly, the court concluded that the Colorado Law ‘need not survivestrict scrutiny.‘

First, the court found that the Colorado Law is not facially discriminatory. According to the Tenth Circuit's opinion, the law ‘applies to certain retailers that sell goods to Colorado purchasers but do not collect Colorado sales or use taxes.‘ Thus,‘[o]n its face,‘ the circuit court held that ‘the law does not distinguish between in-state and out-of-state economic interests.‘ Instead, the law ‘imposes differential treatment based on whether the retailer collects Coloradosales or use taxes.‘

As explained by the Tenth Circuit, this statutory wording, which does not contain any ‘identifying geographical limitations,‘ (the basis used by the U.S. Supreme Court in the past when it has concluded that a law facially discriminates against interstatecommerce) does not constitute facial discrimination as ‘[s]ome out-of-state retailers are collecting retailers, some are not.‘ (Colorado, like most states, allows out-of-state retailers to voluntarily register to collect sales and use taxesto in-state customers).

DMA, in its petition for certiorari, criticizes this analysis, arguing that the Tenth Circuit's analysis ‘makes artful legislative drafting the touchstone of facial discrimination analysis.‘ The lower court, however, dismissed DMA's allegation thatthe Colorado Law facially discriminates against interstate commerce.

The Tenth Circuit's inquiry did not end there, however, as the court noted that ‘[i]n the absence of facial discrimination, a state law may nonetheless discriminate against interstate commerce in its direct effects.‘ According to the TenthCircuit, ‘[a] state law may violate the dormant Commerce Clause ‘when its effect is to favor in-state economic interests over out-of-state interests.’‘ The court, however, found no actual discrimination in the application of Colorado'snotice and reporting obligations and therefore concluded that the Colorado Law is not discriminatory.

****4** In finding that the effects of the Colorado Law are not discriminatory, the Tenth Circuit focused on three ‘instructive principles.‘ First, the court noted that any ‘differential treatment ***44** must adversely affect interstate commerce to the benefitof intrastate commerce to trigger dormant Commerce Clause concerns.‘ With regard to DMA's challenge, the court held that ‘[i]n light of the Colorado consumers' preexisting obligations to pay sales or use taxes whether they purchase goodsfrom a collecting or non-collecting retailer, the reporting obligation [under the Colorado Law] does not give in-state retailers a competitive advantage.‘

The second guiding principle announced by the Tenth Circuit was that because ‘equal treatment requires [only] that those similarly situated be treated alike . . . disparate treatment is [therefore] not unequal treatment or discriminationif the subjects of the treatment are not similarly situated.‘ And because the court below determined that the non-collecting, out-of-state retailers who are subject to Colorado's notice and reporting requirements are not similarly situated to the in-stateretailers, who must comply with separate tax collecting and reporting requirements, the court refused to declare the Colorado Law to be discriminatory.

Finally, the Tenth Circuit noted its third ‘instructive principle‘ was that, ‘despite DMA's myopic view to the contrary, the Supreme Court has repeatedly stressed that laws are not to be understood in isolation, but in their broader context.‘This ‘broader context,‘ according to the court below, ‘helps determine whether a law ‘alters the competitive balance between in-state and out-of-state firms.’‘ And, according to the Tenth Circuit's ruling, ‘DMA has not shown the ColoradoLaw imposes a discriminatory economic burden on out-of-state vendors when viewed against the backdrop of [in-state] collecting retailers' tax collection and reporting obligations.‘ Accordingly, the Tenth Circuit determined that the Colorado Lawis not discriminatory in its direct effects.

Tenth Circuit holds Colorado Law does not impose an undue burden on interstate commerce.

After concluding that the Colorado Law was not discriminatory, the Tenth Circuit addressed DMA's second claim that the Colorado Law 'unduly burdens interstate commerce.' According to the court below, '[s]tate laws that are not discriminatorymust nevertheless not unduly burden interstate commerce.'

Addressing the undue burden issue, the Tenth Circuit analyzed whether 'the burdens imposed by the [Colorado Law] are inextricably related in kind and purpose to the burdens condemned in [*Quill Corp. v. North Dakota,* 504 U.S.298 (1992) ('*Quill*')].' As regular readers of this column are well aware, *Quill* stands for the general proposition that in order for a state to require an out-of-state vendor to collect sales and use taxes in thatstate, the vendor must have a physical presence in the state. The Tenth Circuit, however, refused to extend *Quill's* holding to DMA's challenge, finding that *Quill* was not binding in its inquiry 'in light of Supreme Court and TenthCircuit decisions construing it narrowly to apply only to the duty of *collecting* and *remitting* taxes.' (Emphasis added).

****5** This, according to the Tenth Circuit, did not cover DMA's challenge, as the Supreme Court in *Brohl I* held that Colorado's notice and reporting requirements do not constitute tax *collection.* Accordingly, the Tenth Circuit, whichwas unable to 'identify any good reason to sua sponte extend the bright-line rule of *Quill* to the notice and reporting requirements of the Colorado Law,' held that the law did not unduly burden interstate commerce.

The Tenth Circuit invites a response from Congress.

As mentioned above, part of the Tenth Circuit's analysis was the scope of *Quill*, which, according to the circuit court, affected 'both DMA's claim for discrimination and for undue burden.' In addition to concluding that '*Quill* appliesnarrowly to and has not been extended beyond tax collection,' the Tenth Circuit also noted the Supreme Court's observation in *Quill* that 'Congress holds the 'ultimate power' and is 'better qualified to resolve' the issue of 'whether, when, and to what extent the States may burden interstate [retailers] with a duty to collect [sales and] use taxes.'' In other words, the court is inviting Congress to address the issue of tax collection by remote retailers.Whether Congress, with several bills related to interstate tax collection pending before it, accepts the court's invitation remains to be seen.

Questions presented.

In its petition for certiorari, DMA now presents the following questions for review:

1. 'Whether a state statute that imposes regulatory obligations that apply, as a matter of law, solely to out-of-state companies, but does not use 'language explicitly identifying geographical distinctions' in its text discriminates againstinterstate commerce?'

2. 'Whether the Tenth Circuit erred in adopting a 'comparative burdens' test for discrimination, under which the burden of regulatory requirements imposed solely on out-of-state retailers may be offset by different obligations imposed on in-stateretailers?'

3. 'Whether the Tenth Circuit erred in concluding that out-of-state retailers that do not collect Colorado sales tax are 'not similarly situated' to their direct in-state competitors who collect Colorado sales tax?'

Petitions Still Pending

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

Rite Aid claims NY State property tax assessments violate equal protection.

In *Rite Aid Corp. v. Huseby*, Docket No. 16-36, petition for cert. filed 7/5/16, rulings below at *Rite Aid Corp. v Haywood*, 130 A.D.3d 1510 (N.Y. 4th Dep't 2015), *lv. to appeal denied*, 26 N.Y.3d 915 (2016) and *RiteAid Corp. v. Huseby*, 130 A.D.3d 1518 (N.Y. 4th Dep't 2015), *lv. to appeal denied*, 26 N.Y.3d 916 (2016), Rite Aid Corporation (‘Rite Aid‘) appeals two rulings from the New York State Appellate Division Fourth Department.In its rulings, the Fourth Department (with one dissent) reversed a trial court's reduction of the assessed property values of several parcels containing Rite Aid's retail drugstores. According to the Fourth Department, the lower court, in reducing the assessedvalue of the properties, was wrong to accept Rite Aid's expert appraisals, as those appraisals improperly excluded ‘the recent sale of the subject property as well as readily available comparable salesof national chain drugstore properties in the applicable [net lease national drugstore] submarket.‘

****6** Rite Aid, however, argues that it was proper to exclude these comparables from its appraisals since national chain drugstores, including Rite Aid's own stores, are often financed with what are known as ‘built-to-suit leases.‘ According to Rite Aid,because this financing method ***46** creates above-market rental rates, any use of such comparables in assessing property taxes artificially inflates the value of Rite Aid's properties and impermissibly discriminates against all taxpayers who choose to finance developmentswith built-to-suit leases vis-a-vis taxpayers who utilize more traditional financing methods.

Although Rite Aid did not raise any constitutional issues before the lower courts, Rite Aid now presents the U.S. Supreme Court with the following question for review: ‘Was it a violation of the national drugstore taxpayer's constitutional right of EqualProtection for the Appellate Division Fourth Department to reverse the trial court and reinstate the taxpayer's assessments which were based on the value of above market leases encumbering their stores, when all other taxpayers are assessed based on the valueof their real property alone.‘ (For more background on this case, including a discussion of Rite Aid's financing model, see U.S. Supreme Court Update, 26 JMT 38 (October 2016).)

Property owner asks Court to review MD judge's failure to recuse himself in local property tax dispute.

In *Pickett v. City of Frederick*, Docket No. 16-105, petition for cert. filed 7/21/16, ruling below at Case No. 0759, Maryland Court of Special Appeals, October 6, 2015, 2015 WL 5117649, Allan Pickett, a Maryland resident, asks the U.S. SupremeCourt to review a ruling of the Court of Special Appeals of Maryland in which the court affirmed a lower court's judgment permanently foreclosing Mr. Pickett's right to redeem a property following a tax sale. In his petition for certiorari, Mr. Pickett allegesthat because the trial judge who issued the lower court's judgment foreclosing his right of redemption had also presided over an earlier condemnation mediation between Mr. Pickett and the City of Frederick, the judge's involvement in the redemption case posedan ‘unconstitutional risk of bias‘ that violated his right of due process of law under the Fourteenth Amendment of the U.S. Constitution.

Citing to *Williams v. Pennsylvania*, 136 S. Ct. 1899 (2016), Mr. Pickett claims in his petition for certiorari that ‘due process of law requires adjudication by a judge who satisfies the objective appearance of impartiality. ‘ In lightof this principle, Mr. Pickett presents the Court with the following questions for review: [1] ‘Was the failure of the trial judge who considered and issued the judgment foreclosing a property owner's right of redemption to recuse himself dueto his earlier court-ordered and confidential mediation between the parties a denial of due process of law under the Fourteenth Amendment;‘ and [2] ‘When a trial judge fails to meet the objective standards of impartiality required by dueprocess, should prejudice be presumed from his failure to recuse or disqualify himself?‘ (For more background on this case, including a discussion of the underlying property dispute, see U.S. Supreme Court Update, 26JMT 38 (October 2016).)

States challenge DE's right to claim MoneyGram's uncashed ‘official checks.‘

****7** In *Delaware v. Pennsylvania and Wisconsin* (motion for leave to file a bill of complaint filed 5/26/16) and *Arkansas et. al. v. Delaware* (motion for leave to file a bill of complaint filed 6/9/16), Delaware and, in a separate filing,Arkansas (along with 20 other states) ask the U.S. Supreme Court to grant leave to file a complaint and to exercise its exclusive and original jurisdiction over the states' complaints pursuant to Article III, Section2, Clause 2 of the U.S. Constitution and Title 28, Section 1251(a) of the U.S. Code. (On 6/3/16, the State of Wisconsin also filed a brief and motion for leave to filecounterclaim after Delaware submitted its complaint naming Pennsylvania and Wisconsin as defendants.)

The underlying complaints relate to an ongoing dispute over the proper classification of (and priority rules applicable to) MoneyGram's 'official checks.' In particular, the states disagree as to whether MoneyGram's official checks are properly classifiedas third-party bank checks (which would be subject to the federal common-law priority rules established in *Texas v. New Jersey*, 379 U.S. 674 (1965)) and escheat to MoneyGram's state of incorporation—Delaware—or, alternatively, whetherthe checks are more akin to money orders (which would be subject to special statutory priority rules under the Federal Disposition of Abandoned Money Orders and Traveler's Checks Act of 1974 (the 'Act')) and escheat to the state of purchase —i.e.,Pennsylvania, Wisconsin, Arkansas, Texas, etc.

Although the dispute pits state against state over the proper classification of the official checks and the priority rules applicable thereto, the states do agree on one thing: that the U.S. Supreme Court is the exclusive forum that can and should hear thecase.

The first state to file its motion for leave to file a bill of complaint was Delaware on 5/26/16. Delaware named Pennsylvania and Wisconsin as defendants in its suit and argues that the U.S. Supreme Court should hear its case because it 'has no sufficientremedy except by invoking the Court's original jurisdiction in this proceeding.'

In its bill of complaint, Delaware asks the Court specifically to (1) '[d]eclare that MoneyGram Official Checks are not 'a money order, traveler's check, or other similar written instrument'' under the Act; (2) '[i]issueits Decree commanding the State of Wisconsin and the Commonwealth of Pennsylvania not to assert any claim over abandoned and unclaimed property related to MoneyGram Official Checks;' and (3) '[i]ssue its Decree that all future sums payableon abandoned MoneyGram Official Checks should be remitted to the State of Delaware.'

On 6/3/16, Wisconsin was the next state to get its papers before the Court, responding to Delaware's bill of complaint by filing a motion for leave to file counterclaim. In its counterclaim, Wisconsin agrees that the Court should exercise its exclusive jurisdiction,but requests that the Court (1) '[d]eclare the rights of Wisconsin with regard to unclaimed funds from Official Checks purchased in Wisconsin, which Delaware has wrongly seized;' (2) '[i]ssue an Order commanding Delaware tocease taking custody of funds from abandoned Official Checks purchased in Wisconsin;' and (3) '[i]ssue an Order commanding Delaware to pay Wisconsin damages in the amount of the unclaimed funds from abandoned Official Checks purchased inWisconsin.'

****8** Wisconsin's counterclaim is a direct response to Delaware's Bill of Complaint. On 6/19/16, however, Arkansas, along with 20 other states (Arizona, Texas, Alabama, Colorado, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Montana, Nebraska,Nevada, North Dakota, Ohio, Oklahoma, South Carolina, Utah and West Virginia) filed a separate motion for leave to file a bill of complaint with the Court. These states also agree that the Court should exercise its original and exclusive jurisdiction over ***48** the dispute, but similar to Wisconsin's claims, the states allege that Delaware has wrongly claimed funds related to MoneyGram's official checks.

Specifically, Arkansas and its counterparts ask the Court to (1) '[d]eclare the rights of the Plaintiff States to the sums payable on unclaimed and abandoned MoneyGram official checks purchased in the Plaintiff States and unlawfully remittedto the State of Delaware;' (2) '[d]eclare the rights of the Plaintiff States to future sums payable on unclaimed and abandoned MoneyGram official checks purchased in the Plaintiff States;' and (3) '[i]ssue its decree commandingthe State of Delaware, its officers, citizens, and subdivisions, to: (a) deliver to the Plaintiff States sums payable on unclaimed and abandoned MoneyGram official checks purchased in those States and unlawfully remitted to Delaware; [and] (b) cease-and-desistall actions which interfere with and impede the authority of the Plaintiff States to take custody of sums payable on unclaimed and abandoned MoneyGram

official checks purchased in those States. ‘(For more background on this case, including a detailed discussion of MoneyGram's ‘official checks‘ and the general priority rules for unclaimed intangible personal property, see U.S. Supreme Court Update, 26JMT 42 (September 2016).)

CA taxpayer asks Court to review scope of Tax Injunction Act.

In *Huang v. City of Los Angeles,* Docket No. 15-1507, ruling below at 2016 WL 683269 (9th Cir. 2016), the U.S. Court of Appeals for the Ninth Circuit largely affirmed a district court's ruling that (1) certain business taxes assessed by the Cityof Los Angeles, as well as penalties added thereto for delinquent payment, qualify as ‘taxes‘ under the Tax Injunction Act, such that the lower federal court lacked subject matter jurisdiction to hear a taxpayer's claim, and (2) that the Tax InjunctionAct also deprived the lower court of jurisdiction to hear the taxpayer's challenge to the methods by which the City of Los Angeles obtains information during its audits.

The taxpayer, Roger Huang, a general partner of a partnership that owns an apartment building near Dodger Stadium, argues that the Court should grant his petition to (1) resolve a circuit split as to whether the Tax Injunction Act deprives federal courtsof jurisdiction to hear challenges to a penalty imposed for failing to pay a tax, and (2) address the Ninth Circuit's failure to follow the Supreme Court's recent precedent as announced in *Direct Marketing Association v. Brohl,* 135 S. Ct. 1124(2015), which is both discussed above and, according to Huang, held that ‘the Tax Injunction Act does not bar federal jurisdiction for challenges to the methods by which the government gathers the information it uses to calculate tax liability.‘

****9** In his petition for certiorari, Huang presents the following questions for review: ‘(1) Whether a penalty imposed for failing to pay a tax is itself a ‘tax’ under the Tax Injunction Act,‘ and ‘(2) Whether the Tax Injunction Act deprivesfederal courts of jurisdiction to hear a taxpayer's challenge to the method by which the government obtains the information it uses to calculate tax liability.‘ (For more background on this case, including a detailed discussion of the lower court's findings,see U.S. Supreme Court Update, 26 JMT 42 (September 2016).)

Supreme Court considers binding nature of Multistate Tax Compact.

In *Gillette v. California Franchise Tax Board*, Docket No. 15-1442, petition for cert. filed 5/27/16, ruling below at 363 P.3d 94 (2015), Gillette, along with several other corporate taxpayers, asks the Court to review a decision by the CaliforniaSupreme Court, in which California's highest court held that the Multistate Tax Compact (the ‘Compact‘) does not qualify as a binding reciprocal agreement. The California ruling is the latest development in the protracted litigation involving variousstates' attempts to override aspects of the Compact.

Gillette's petition for certiorari argues, among other things, that review is warranted because the California Supreme Court erred in its holding that the Compact is not a binding contract and therefore subject to the U.S. Constitution's Contract Clause.According to Gillette, having ‘held that the Compact is not binding, the California Supreme Court declined to decide whether a binding interstate compact that has not been approved by Congress takes precedence over other state law or whether California'sdeparture from the Compact violates the Contract Clause.‘

Noting that the Compact is ‘a multistate agreement that addresses significant aspects of the state taxation of multistate businesses,‘ Gillette and its counterparts now ask the U.S. Supreme Court whether ‘the Multistate Tax Compact has the statusof a contract that binds its signatory states.‘ (For more background on this case, including a detailed discussion of the California court's ruling, see U.S. Supreme Court Update, 26JMT 43 (August 2016).)

DMA's petition stems from a 2010 Colorado law requiring remote retailers selling to in-state customers to comply with a number of notice and reporting obligations.

The Tenth Circuit determined that DMA failed to carry its burden of showing that the Colorado Law discriminated against interstate commerce, either on its face or in its practical effects.

The Tenth Circuit refused to extend *Quill's* holding to DMA's challenge.

The states do agree on one thing: that the U.S. Supreme Court is the exclusive forum that can and should hear the [MoneyGram] case.

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