No. 14-1175

In the
Supreme Court of the United States

FRANCHISE TAX BOARD OF
THE STATE OF CALIFORNIA,
Petitioner,

v.

GILBERT P. HYATT,
Respondent.

On Writ of Certiorari to the
Supreme Court of Nevada

BRIEF *AMICUS CURIAE* OF MULTISTATE TAX COMMISSION IN SUPPORT OF PETITIONER FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA

Gregory S. Matson
Executive Director
Helen Hecht*
General Counsel
*Counsel of Record
Sheldon Laskin
Bruce Fort
Lila Disque
Counsel

Multistate Tax Commission
444 North Capitol St., N.W.
Suite 425
Washington, D.C. 20001
(202) 650-0300
hhecht@mtc.gov

Counsel for *Amicus Curiae*
Multistate Tax Commission

September 10, 2015

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes and Rules

Other Authorities

BRIEF OF MULTISTATE TAX COMMISSION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA

INTEREST OF THE *AMICUS CURIAE*

Amicus curiae Multistate Tax Commission ("the Commission") respectfully submits this brief in support of the Petitioner, California Franchise Tax Board (the FTB). In *Nevada v. Hall*, 440 U.S. 410 (1979), this Court for the first time ruled that a state cannot assert its sovereign immunity against a suit brought in another state's court. As the case now before the Court demonstrates, such suits can readily disrupt critical state operations and processes, and generate conflicts among the states. The Commission has an interest in this case because *Hall* is a particular threat to the administration and enforcement of state taxes.[1]

The Commission was established by the Multistate Tax Compact in 1967. *See U.S. Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452 (1978)(upholding

[1] No counsel for any party authored this brief in whole or in part. Only *amicus curiae* Multistate Tax Commission and its member states, through the payment of their membership fees, made any monetary contribution to the preparation or submission of this brief. This brief is filed by the Commission, not on behalf of any particular member state. Both parties to this action have filed blanket consents to the filing of *amicus* briefs.

the validity of the Compact).[2] The Commission promotes cooperation among states in the administration of taxes imposed on activities in interstate commerce by providing a forum for drafting uniform laws, conducting joint audits and training programs, and facilitating settlement of unreported taxes.

The Commission agrees with the FTB that *Hall* should be overturned. *Hall*'s holding, that states may not assert sovereign immunity in the courts of their sister states, is in conflict with more recent decisions of this Court, which recognize the principle that state sovereign immunity is essential to our constitutional structure. *See Alden v. Maine,* 527 U.S. 706, 728 (1999). The majority in *Hall* rejected this principle and instead analogized the relationship of the states to foreign independent sovereigns—observing that these foreign sovereigns lack the right to assert immunity in each other's courts. Of course, states are not independent sovereigns in that sense. Moreover, their interdependence ele-

---

[2] The Commission is comprised of the heads of the tax agencies of states that have adopted the Compact. In addition to the sixteen compact members, thirty-two states are sovereignty or associate members. Compact members are: Alabama, Alaska, Arkansas, Colorado, District of Columbia, Hawaii, Idaho, Kansas, Missouri, Montana, New Mexico, North Dakota, Oregon, Texas, Utah, and Washington. Sovereignty members are: Georgia, Kentucky, Louisiana, Michigan, Minnesota, New Jersey, and West Virginia. Associate Members are: Arizona, California, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Mississippi, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Wisconsin, and Wyoming.

vates, rather than detracts from, the importance of their inherent immunity. When determining whether a foreign sovereign is entitled to have its own law apply in a suit brought against it, the principles of comity are sufficient. But our federal system demands more.

The implications of *Hall*'s ruling denying states the right to assert immunity from suit may not have been entirely evident in the context of a simple tort case, where the sole conflict at issue before the Court concerned the recognition of that immunity. The implications of *Hall* are clearly more serious when, as in this case, the out-of-state suit relates to state tax administration and enforcement.

SUMMARY OF ARGUMENT

In rejecting the argument that states have immunity from suit in the courts of another state, the majority in *Hall* admitted that this left the protection of a defendant state's sovereign interests to the discretionary application of comity, *Hall*, 440 U.S. 410, 424-428, a doctrine referred to as "voluntary" by the Nevada Supreme Court in this case. *Franchise Tax Bd. of California v. Hyatt*, 538 U.S. 488, 493 (2003) ("*Hyatt I*")(quoting the unpublished table decision from *Franchise Tax Bd. of California v. Dist. Ct.*, 105 P.3d 772 (Nev. 2002)). But the dissenting opinions in *Hall* predicted that the failure to recognize state sovereign immunity would "place severe strains on our system of cooperative federalism," *Hall*, 440 U.S. 410, 429 (Blackmun, J., dissenting), and set the Court "adrift on uncharted waters..." (Rehnquist, J., dissenting).

The majority's decision in *Hall* may well have set the Court, and the states, adrift in the sense that such suits had never before been permitted. But these are not entirely *uncharted* waters. If states are to be denied immunity and treated, instead, as any other litigants when sued in the courts of their sister sovereigns, then we have ample precedent to predict the general course that such suits will take: states will regularly be subject to the jurisdiction of out-of-state courts due to their every-day tax enforcement activities, even if their agents do not venture beyond their borders. An out-of-state suit against the taxing state may include issues directly related to that state's enforcement or administration of taxes. In such a suit, the forum state will apply its own procedural rules, may apply its own substantive laws, and may decide what weight to give other public acts or documents of the defendant state. *See* Restatement (Second) of Conflict of Laws § 145 (1971).The decision of the out-of-state court will not be subject to review by the defendant state's courts, but will be entitled to preclusive effect in those courts under the Full Faith and Credit Clause, U.S. Const., Art. IV, § 1.

In his dissent in *Hall,* Justice Rehnquist also predicted that "the ingenuity of our [legal] profession" would inevitably create pressure on the Court to limit that case's holding. 440 U.S. at 443. If the case now before the Court has not created sufficient pressure to overturn or limit *Hall*, it is inevitable that future plaintiffs and their lawyers, following the

course set here, will only increase that pressure.[3] Nor is it some abstract notion—the "dignity" of sovereign states—that is at issue, but the integrity of essential sovereign functions.

If cases such as this one multiply in coming years, it should come as no surprise, given the unpopularity of taxes generally, and the tendency of all plaintiffs, including taxpayers, to seek the most favorable forum. While such suits are rare in state courts, there have certainly been many attempts over the years to circumvent state court jurisdiction and bring state tax related suits in federal court, despite the doctrine of comity and the jurisdictional bar imposed by the Tax Injunction Act.[4] *See Hibbs v. Winn*, 542 U.S. 88, 104 (2004); *Levin v. Commerce Energy, Inc.,* 560 U.S. 413 (2010); *Franchise Tax Bd. of California v. Alcan Aluminium Ltd.*, 493 U.S. 331 (1990); *California v. Grace Brethren Church*, 457 U.S. 393 (1982); *Fair Assessment in Real Estate v. McNary*, 454 U.S. 100, 102 (1981).

Suits in state courts also raise a possibility that federal courts generally do not: the potential for conflicts between taxing-state and forum-state policies that might be resolved against the taxing state under choice-of-law rules. These differences may also isolate the forum state from any risk that the court's

---

[3] This suit has already apparently encouraged other Nevada residents to file similar complaints, raising the prospect of similar litigation. *See, e.g.*, Complaint, *Schroeder v. California*, No. 14-2613 (Dist. Ct. Nev. filed Dec. 18, 2014) (alleging "extreme and outrageously tortious conduct" by FTB).

[4] 28 U.S.C. § 1341.

ruling would set a precedent adversely affecting its own enforcement efforts. Here, for example, the Nevada court need not worry that holding the FTB to a certain standard will set a precedent for Nevada's own enforcement of income taxes, since Nevada has no income tax.

Finally, this case also represents a threat to the interstate cooperation essential to the administration and enforcement of taxes, which benefits both states and taxpayers generally. To the extent *Hall* permits policy differences between states to become persistent unresolved conflicts, these conflicts will interfere with the incentives for states to cooperate with and assist each other.

ARGUMENT

I. This case sets a course for future plaintiffs wanting to bypass, delay, and disrupt state tax enforcement—against which comity may prove insufficient protection.

This case, as well as other cases involving suits against states in out-of-state courts, charts a course for plaintiffs who wish to bypass, delay and disrupt the enforcement of state taxes.

A. Taxpayers may readily obtain jurisdiction over the taxing state in another state's courts.

While out-of-state taxpayers may have a greater opportunity to bring a suit against a taxing state in an out-of-state forum, it is not necessary for a plaintiff

to be a resident of another state in order to bring suit against the taxing state there. (Obviously, Mr. Hyatt's residency remains unsettled.) Neither is it necessary for the injury to have occurred in the forum state. *See Cardillo v. Liberty Mutual Ins. Co.*, 330 U.S. 469 (1947), or for the taxing state to have sent its employees or agents into the forum state, or even if it has done so, for the actions in question to have been committed entirely in that state. *Erlich-Bober & Co. Inc. v. Univ. of Houston*, 404 N.E.2d 726 (N.Y. 1980); *County of Beaver v. Amarillo Hospital District*, 835 S.W.2d 115 (Tex. Ct. App. 1922). It appears the minimum contacts needed for a court of one state to acquire jurisdiction over another state can be shown by the general kinds of activities that states regularly engage in in administering and enforcing taxes. *See Hoskin Through Fleming v. California*, 812 P.2d 1068, 1071 (Ariz. 1990), citing *Hanson v. Denckla*, 357 U.S. 235, 251 (1958); and *Grand River Enters. Six Nations, Ltd. v. Pryor*, 425 F.3d 158 (2d Cir. 2005). Therefore, if a taxpayer resides or has a home in a state in which the taxing state makes contact with that taxpayer, or if the taxpayer has a business operation, conducts investment activity, maintains substantial records, or has other presence in the state with respect to which the taxing state is attempting to administer or enforce taxes, that location would provide a likely forum for a suit against the taxing state.

The same minimum contacts, or perhaps a little more, are also all that may be required for the court to assert the authority to apply its own law, entertaining specific claims recognized under that law. This case, if not reversed, would set a precedent that

a state court may have jurisdiction to hear all manner of intentional torts, and perhaps even negligence claims, against defendant states for acts committed in the course of an audit or other enforcement activity. Critically, a significant portion of the acts about which Mr. Hyatt complains, and for which judgment against the state was upheld by the Nevada Supreme Court, were clearly conducted outside the state. *See Franchise Tax Bd. v. Hyatt*, 335 P.3d 125, 144-145 (Nev. 2014). It is likely that at least some courts will also agree to take jurisdiction not just of tax-related torts, but of the related tax issues themselves. The district court in this case declined to consider the issue of residency in this case, but apparently only because the administrative proceeding in California had not yet concluded. *Id.* at 149. Moreover, even if the court wishes to undertake the task of segregating the defendant state's imposition of tax from related tort claims, out of respect for the taxing state or for other reasons, it is likely to be too difficult to do perfectly, as it was for the court in this case. *See id.* at 149-152.

B. A taxpayer may then use the out-of-state suit to interfere with, delay, and disrupt the specialized processes used for tax administration and enforcement.

It may go without saying that when a state is sued in an out-of-state court in a case involving tax issues, the court will apply its own procedural rules, bypassing the defendant state's own processes and procedures. *See Sun Oil Co. v. Wortman*, 486 U.S. 717

(1986). But what may be less obvious is how this rule may be exploited by plaintiffs bringing a suit against a state during the course of some tax-related administrative process, or how disruptive that may prove to be to tax administration and enforcement.

States, like the federal government, long ago determined that rather than having tax issues resolved in the district courts, specialized administrative processes, procedures, and forums were required. *See Abelleira v. District Court of Appeal*, 109 P.2d 942 (Cal. 1941); *Dep't of Taxation v. Scotsman Mfg. Co., Inc.*, 849 P.2d 317 (Nev. 1993). These processes ensure that revenue streams are protected, delays are avoided, and proper regulatory expertise is brought to bear on difficult questions. *See Perez v. Ledesma*, 401 U.S. 82, 127 n. 17 (1971)(Brennan, J., concurring in part and dissenting in part). This Court has recognized the essential role that specialized administrative processes typically play in tax enforcement, saying that "[a]ny delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public." *Dows v. Chicago,* 11 Wall 108, 110 (1871); *Fair Assessment in Real Estate v. McNary*, 454 U.S. 100, 102 (1981).

Governments have made these specialized processes the exclusive remedy in tax matters through the explicit waiver of sovereign immunity. *U.S. v. Williams,* 514 U.S. 527, 531 (1995); *Patterson v. Gladwin Corp.*, 835 So.2d 137 (Ala. 2002); and *Northwall v. State, Dep't of Revenue*, 637 N.W.2d 890 (Neb. 2002). Governments also depend on exhaustion

of these administrative remedies. *See Owner-Operators Indep. Drivers Ass'n of Am. v. State*, 553 A.2d 1104 (Conn. 1989); and *U.S. Xpress, Inc. v. New Mexico Taxation & Revenue Dep't*, 136 P.3d 999 (N.M. 2006). In the federal government's case, of course, taxpayers cannot bring suit in state courts concerning issues of federal taxation. 28 U.S.C. § 1346(a)(1). *See also P.C. Monday Tea Co. v. Milwaukee County Expressway Comm'n*, 139 N.W.2d 26, 29-30 (Wis. 1966). The conflicts and difficulties this would cause are obvious.

Because states have developed specialized processes for administration and enforcement of taxes, they are bound by those processes and generally are required to follow them in order to obtain a final enforceable tax liability against a taxpayer. *See* CAL. REV. & TAX. CODE §§ 19044 and 21011. Accordingly, a plaintiff against whom a state has commenced some enforcement activity can obtain a distinct advantage by filing suit in an out-of-state court to delay the process used by the taxing state. Because states are prevented from asserting immunity, the court in which the suit is brought will have no choice but to consider the claims asserted and the taxing state will have no choice but to defend those claims. The issues may be sufficiently novel and complex that even preliminary matters would take time to resolve. An order granting or denying jurisdiction will likely be subject to interlocutory appeal, as it was here, creating further delay.

The plaintiff can also petition the trial court, as Mr. Hyatt did, to issue protective orders preventing the defendant state's use of important documents neces-

sary for any tax proceeding in that state.[5] The existence of an ongoing suit in a state will also ensure that the plaintiff has at least a reasonable basis for resisting informal requests for information or even subpoenas from the taxing state. So although the taxing state may institute administrative proceedings of its own in order to ensure that tax liabilities are established within statutory guidelines, those proceedings can be delayed not only by denying documents needed but by issuing subpoenas to officials and employees and requiring them to submit to depositions and other lengthy discovery as part of the out-of-state suit.

Note also that some critical rules, such as statutes of limitation, that might appear substantive in the context of tax administration because of their role in determining tax liabilities, have been held to be procedural. *Sun Oil*, 486 U.S. at 727-728 and *Sam v. Sam*, 134 P.3d 761 (N.M. 2006). *See also* Restatement (Second) of Conflict of Laws § 122 (1971).

C. Taxpayers may also identify conflicts of law or policy that can be exploited, and argue that the public documents of the defendant state are not entitled to weight in order to deflect or undermine the tax issues.

---

[5] *Franchise Tax Bd. of California v. Dist. Ct.*, 105 P.3d 772 (Nev. 2002) (unpublished table decision), available at: http://caseinfo.nvsupremecourt.us/document/view.do?csNameID=5165&csIID=5165&deLinkID=184207&sireDocumentNumber=02-05994.

Apart from any procedural issues, a state court exercising jurisdiction over a defendant state must also determine, under choice-of-law rules, whether it should apply the substantive law of the defendant state, or, if the forum state's law or public policy differs, whether that law should be applied instead. Either way, the court must have some understanding of the defendant state's law and its effect on the issues in suit. But unlike the law of torts, state tax laws can and do differ substantially in part as a result of a "healthy form of rivalry." *See Zobel v. Williams*, 457 U.S. 55, 67 (1982). This Court has also held that whether a state's own taxes are constitutional does not depend on what other states may or may not choose to tax, and therefore one state is not required to defer to the tax policies of another state. *See Comptroller v. Wynne,* 125 S.Ct. 1787, 1804 (2015); *Moorman v. Bair*, 437 U.S. 267, 280 (1978). Substantive tax law is not only unique to each state, therefore, it is often detailed and complex, with an extensive body of regulatory rules and other administrative guidance necessary to administer those taxes.

Under the best circumstances, it puts a heavy responsibility on an out-of-state court to understand a defendant state's substantive law when making choice of law decisions concerning tax related issues. Here, of course, California imposes an individual income tax, along with all of the concomitant substantive and procedural rules for such a tax, while Nevada does not. This appears the very kind of conflict in public policy that would entitle Nevada courts to defer to Nevada's own policy choices, if otherwise appropriate, in suits against another state. But even if

a Nevada court wished to apply California law, it would obviously have little experience with that law. Even the proper exercise of comity would appear to require a greater familiarity with the defendant state's tax law than a court in another state is likely to have.

But more important than the choice of law rules themselves, or the difficulties they present when taxes are involved, is the fact that a court's application of those rules will typically be reviewed under a very lenient constitutional standard. A court need not demonstrate that the forum state has the majority of the contacts with the matter at issue in order to apply its own law. For example, in *Alaska Packers Ass'n v. Industrial Accident Comm'n*, 294 U.S. 532 (1935) a California court was determined to have properly applied its own workmen's compensation law to an employee employed in and injured in Alaska, because the employment contract was executed in California. In *Cardillo v. Liberty Mutual Ins. Co.*, 330 U.S. 469 (1947), a Minnesota court was allowed to apply Minnesota law in a case concerning an out-of-state accident involving a nonresident employee. And, in *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981), this Court held that a Minnesota court could apply Minnesota law to a matter involving an out-of-state accident and the death of an out-of-state resident because, in part, the plaintiff (the decedent's wife) had moved to Minnesota after the accident occurred. *Id.* at 318-319.

Moreover, the fact that choice-of-law decisions may be unsound as a matter of conflicts law does not necessarily implicate the Full Faith and Credit Clause.

Id. at 323. (Stevens, J. concurring). For example, a court does not violate the Full Faith and Credit Clause if, in making a choice between competing substantive law, it merely misconstrues the law of another state. Instead, the mistake must be clear, must contradict an established interpretation of the law, and must be brought to the court's attention during the litigation. *See Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 96 (1917) and *Western Life Indemnity Co. v. Rupp*, 235 U.S. 261, 275 (1914). In a suit against a state in an out-of-state court, the courts of the defendant state will have no opportunity to review the forum state's interpretation of its own law.

As this court reiterated in *Hyatt I,* the question is merely whether the forum state has adopted a "policy of hostility" to the laws of the defendant state. Therefore, states must assume that a forum state's choice to apply that state's law will be subject to change on review only where the forum state "has had no significant contact or significant aggregation of contacts, creating state interests, with the parties and the occurrence of the transaction." *Allstate Insurance*, 449 U.S. at 308 (1981). *Hyatt I,* 538 U.S. at 413. *See also Head v. Platte County*, 749 P.2d 6 (Kan. 1988)(holding that in a suit against a sheriff in Missouri for acts committed in Missouri against a Kansas resident that: "No state should give effect to the law of another on principles of comity when the effect would be deleterious to the public policy of the forum state.")

Plaintiffs may also attempt to persuade the out-of-state court to disregard the forum state's laws, regu-

lations, and rulings as well as other public acts or documents, such tax notices, assessments, etc., that would have substantial weight in the taxing state's own forum. If the court agrees to do so, that decision will typically be subject to review only under the most lenient of standards—abuse of discretion. *See Baker v. General Motors Corp.*, 522 U.S. 222 (1998)(holding that unlike the preclusive effect of a judgment, enforcement measures remain subject to the forum state's law); *Hyatt v. Franchise Tax Bd.*, 962 N.Y.S 2d 282 (N.Y. App. Div. 2013) (holding that the FTB's administrative subpoena was not entitled to full faith and credit and that a court may decline, under the doctrine of comity, to enforce a subpoena unless it conforms to the forum state's rules). Nor are administrative rulings of a state administrative forum, which is granted limited jurisdiction, entitled to preclusive effect in the same way as state court judgments. *See Thomas v. Washington Gas Light Company*, 448 U.S. 261 (1980)(holding that Full Faith and Credit principles do not apply to administrative agency rulings in the same way they would apply to state court judgments).

So even if the defendant state were to proceed through such an administrative forum to resolve the tax issue, the ruling might not be entitled to any effect in the out-of-state suit. Nor is this an insignificant problem for the states. At least thirty-three states have specialized tax tribunals to hear tax dis-

putes, separate from the state's courts of general jurisdiction.[6]

In contrast, whatever the court of another state ultimately decides, it will have the advantage of establishing preclusive effect for those issues. A defendant state will not ordinarily be able to refuse giving effect to a judgment against it issued by another state's court, provided the question of jurisdiction was fully and fairly litigated in that court. *Durfee v. Duke*, 375 U.S. 106 (1963)(holding that where a Nebraska court determined that it had jurisdiction over a suit to quiet title in land situated on the Missouri river, a federal District Court sitting in Missouri was not free to make a separate determination as to whether the Nebraska court had jurisdiction); and *Underwriters Nat'l Assurance Co. v. North Carolina Life & Accident & Health Ins. Guar. Ass'n.*, 455 U.S. 691 (1982) (holding that North Carolina could not deny enforcement of an Indiana court judgment even if it found the Indiana lacked subject-matter jurisdiction). *See also Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 277 (1935).

D. While comity may limit suits against taxing states, as a discretionary doctrine, it is unlikely to prevent such suits, especially since there are strong countervailing incentives.

---

[6] *See* AICPA Chart of States With and Without State Tax Tribunals (Current as of 10/14/2014), available at: http://www.aicpa.org/Advocacy/Tax/StateLocal/Pages/StateTaxTribunals.aspx.

The chief downside risk to taxpayers who choose to sue a taxing state in an out-of-state court in order to disrupt, delay, or otherwise bypass the taxing state's administrative and enforcement processes, is that the court may ultimately exercise its authority to dismiss the suit on comity grounds. When this risk is weighed against the potential benefits, it is likely to prove ineffective at protecting states from such suits, however. In this case, for example, Mr. Hyatt's suit has served to delay the state of California from reaching any final administrative decision as to his tax liability, after commencing an audit over twenty years ago. This suit also required California to expend considerable resources, which other states may lack, as well as time in litigation, and has made it difficult for California to obtain records and other evidence necessary for tax enforcement. As a result of the suit, Mr. Hyatt was awarded a judgment amounting to $490 million, and while this judgment has been substantially reduced, it sends a strong signal, and likely gives future plaintiffs undue leverage in dealing with defendant states. At the very least, states facing these kinds of suits will have little certainty as to how an out-of-state court will rule and this will undoubtedly give plaintiffs a substantial advantage, as well as an incentive to push that advantage.

II. Suits such as this one may create persistent conflicts between states which would interfere with the interstate cooperation essential to enforcement of state taxes.

In the context of state tax enforcement, cooperative federalism is not just an ideal, it is imperative. Regardless of the tax system or the diligence and effectiveness of tax administrators, there will always be a level of noncompliance. When such noncompliant taxpayers are outside a state's borders, this obviously complicates enforcement. Therefore, states are compelled to act together in order to minimize tax fraud and provide taxpayers with a reliable framework. This cooperation comes in many forms, including assistance in the enforcement of subpoenas to obtain the records (without which tax liability could not be determined) and the ability to domesticate and enforce judgments as to tax liabilities. *See Milwaukee Cnty. v. M.E. White Co.*, 296 U.S. 268 (1935)(holding states may not deny full faith and credit to a judgment for taxes); the Interstate Depositions and Discovery Act[7]; and also the Uniform Enforcement of Foreign Judgments Act.[8] States also cooperate in other ways, including enactment of uniform tax laws; participation in alternative dispute resolution programs; coordination of tax credits; acceptance of foreign-state tax exemption certificates; reciprocal enforcement of tax liens; sales and use tax enforcement agreements; creation of guidelines for tobacco tax administration and enforcement; shared

---

[7] National Conference of Commissioners On Uniform State Laws, Interstate Depositions and Discovery Act (2007), http://www.uniformlaws.org/shared/docs/interstate%20depositions%20and%20discovery/uidda_final_07.pdf

[8] National Conference of Commissioners On Uniform State Laws, Uniform Enforcement of Foreign Judgments Act (1964), http://www.uniformlaws.org/shared/docs/enforcement%20of%20judgments/enforjdg64.pdf

audits; and uniformitization of electronic transmission standards. Cooperation is generally beneficial when administration of a tax requires outside information, when a new industry arises that requires a tax framework, or when multistate taxation may be too complex and burdensome for the taxpayer.

One of the most prominent interstate cooperative undertakings combines an effort to protect the states' treasuries with an effort to shield taxpayers from identity theft. Experts believe that, as the IRS implemented anti-fraud protections in 2015, identity thieves shifted their focus to state tax refund fraud.[9] One source estimated the shift resulted in a 3,700 percent increase in fraudulent state tax refund filings in some states.[10] As a result, forty-one states have joined the Federation of Tax Administrators' (FTA) Suspicious Filer Exchange of Information Program to combat fraudulent state tax refunds. Via the program, states provide information about known false filers and schemes—information sister states would otherwise never know until they had been defrauded. This shared outside information means that all of the states in the program are better positioned to identify and recover fraudulent state refunds.

---

[9] *The Rise in State Income Tax Refund Identity Fraud: The True Challenges and New Ways to Combat it*, LexisNexis White Paper,
http://www.lexisnexis.com/risk/downloads/whitepaper/tax-refund-fraud-pov.pdf

[10] *Id.*

In another notable example of collaboration, a number of states realized in early 2000 that sales and use tax sourcing and collection would become a challenge as electronic commerce expanded. This is particularly true given the decision in *Quill v. North Dakota*, 504 U.S. 298 (1992), which determined that a seller cannot be compelled to collect sales tax without a physical presence in the taxing state. In the *Quill* opinion, this Court expressed concern that state tax structures were too complex to require an out-of-state seller to collect sales tax. Therefore, 44 states worked together to create uniform, simplified sales tax rules and definitions, along with a central registration system. To date, 24 states have passed conforming legislation.[11]

States also work together in order to simplify taxes that may otherwise be too complex or burdensome to the taxpayer. The International Fuel Tax Agreement (IFTA) is an agreement among all states and Canadian provinces, which allows a carrier to register and pay motor fuel road taxes in the carrier's home or base state for all participating jurisdictions. Prior to IFTA, each state had its own fuel tax system, and a truck needed tax permits for each state in which it operated.[12] Most states established "Ports of Entry" to issue permits and enforce tax collection, which was burdensome to the trucking industry and the

---

[11] Streamlined Sales Tax Governing Board, *How many states have passed legislation conforming to the Agreement?* http://www.streamlinedsalestax.org/index.php?page=gen_3

[12] IFTA, Inc., *The History of IFTA*, http://www.iftach.org/Meetings/materials/2009/audit2009/013%20The%20History%20of%20IFTA%20and%20IRP.ppt

states. IFTA greatly simplified the process for tax administrators and taxpayers.

Interstate cooperation is a fragile thing, however. In the instances presented here, each participating state surrendered a small part of its taxing power—information, the potential to tax a broader base or administer taxes on its own terms—in exchange for overall benefit to administrators and taxpayers. If a taxing state must worry that its sister states' courts might assert the right to adjudicate its tax-related or enforcement matters, this will inevitably create conflicts that may also impact state cooperation.

CONCLUSION

No state can administer or enforce its taxes without regularly exposing itself to the jurisdiction of other states. *Hall*, therefore, opens up a whole new avenue for many aggrieved taxpayers to challenge state tax imposition or enforcement. These suits may readily serve to bypass, delay, and disrupt the highly specialized state-specific processes upon which each state relies on for tax administration and will inevitably create conflicts between the parallel proceedings in the taxing and the forum state. Principles of comity, even if properly applied, will not protect a state from having to expend significant resources to defend disruptive litigation. Ultimately, these suits also create conflicts between states that may undermine state-to-state cooperation and interfere with interstate tax enforcement efforts.

Respectfully submitted,

Gregory S. Matson
Executive Director
Helen Hecht*
General Counsel
*Counsel of Record
Sheldon Laskin
Bruce Fort
Lila Disque
Counsel
Multistate Tax Commission
444 North Capitol St., N.W.
Suite 425

Washington, D.C. 20001
(202) 650-0300
hhecht@mtc.gov

Counsel for *Amicus Curiae*
Multistate Tax Commission

September 10, 2015