

# Court Case Round Up

IMPORTANT CASES AFFECTING STATE AND LOCAL TAX ADMINISTRATION

# MURPHY, GOVERNOR OF NEW JERSEY, ET AL. v. NATIONAL COLLEGIATE ATHLETIC ASSN. ET AL.

In the Supreme Court of the United States

No. 16-476

- ▶ ISSUE: Whether a federal statute that prohibits modification or repeal of state-law prohibitions on private conduct impermissibly commandeers the regulatory power of states in contravention of *New York v. United States*.
- ▶ DECISION: Reversed, 6-3, in an opinion by Justice Alito on May 14, 2018. Justice Alito delivered the opinion of the court, in which Chief Justice Roberts and Justices Kennedy, Thomas, Kagan, and Gorsuch joined, and in which Justice Breyer joined as to all but Part VI–B. Justice Thomas filed a concurring opinion. Justice Breyer filed an opinion concurring in part and dissenting in part. Justice Ginsburg filed a dissenting opinion, in which Justice Sotomayor joined, and in which Justice Breyer joined in part.

# MURPHY V. NCAA

## ▶ HOLDING:

- ▶ 1. When a State completely or partially repeals old laws banning sports gambling schemes, it “authorize[s]” those schemes under PASPA.
- ▶ 2. PASPA’s provision prohibiting state authorization of sports gambling schemes violates the anticommandeering rule.
- ▶ 3. PASPA’s provision prohibiting state “licens[ing]” of sports gambling schemes also violates the anticommandeering rule. It issues a direct order to the state legislature and suffers from the same defect as the prohibition of state authorization. Thus, this Court need not decide whether New Jersey’s 2014 law violates PASPA’s antilicensing provision.
- ▶ 4. No provision of PASPA is severable from the provisions directly at issue.

# MURPHY V. NCAA

- ▶ Effective July 2018, New Jersey has legalized wagering on professional and collegiate **sports** or athletic events at casinos or racetrack locations, and imposes gaming taxes on those revenues.
- ▶ General provisions (**2018 NJ A 4111, Adopted**): Upon approval of a license, a casino or racetrack may establish a sports wagering lounge independently at the casino or racetrack, or as a partnership between a casino and a racetrack. An operator who has established a sports wagering lounge may also accept wagers by Internet, including from persons who are not physically present in New Jersey if such wagering is not inconsistent with federal law or the law of the jurisdiction, including any foreign nation, in which any such person is located, or such wagering is conducted pursuant to a reciprocal agreement to which the state is a party that is not inconsistent with federal law.
- ▶ As of Aug. 6, the DraftKings Sportsbook offers online sports gambling in New Jersey.

# MURPHY V. NCAA

- ▶ Tax provisions: Under the law, sports wagering revenue, i.e., total wagers less winnings paid, realized by a casino or horse racing permit holder is subject to a 8.5% tax, except that sums received from Internet wagering on sports events is subject to a 13% tax, which will be paid to the Casino Revenue Fund and the investment alternative tax.

*JAMES DAWSON AND ELAINE DAWSON, PETITIONERS  
v. DALE W. STEAGER, WEST VIRGINIA STATE TAX  
COMMISSIONER*

In the Supreme Court of the United States

No. 17-419

ISSUE: Whether the doctrine of intergovernmental tax immunity, as codified in 4 U.S.C. § 111, prohibits the state of West Virginia from exempting the retirement benefits of certain former state law-enforcement officers from state taxation without providing the same exemption for the retirement benefits of former employees of the United States Marshals Service.

# DAWSON V. STEAGER

- ▶ The Dawsons argued that all of James Dawson's retirement income from the US Marshals Service should be exempt from West Virginia income taxes because had he retired from a state, rather than federal, law-enforcement job, the retirement income would be exempt. A state court agreed, holding that the state's tax laws treat different kinds of retirement income differently, depending on the source – contrary to the doctrine of intergovernmental tax immunity. West Virginia Supreme Court of Appeals overturned that decision, and the Dawsons appealed to the U.S. Supreme Court.
- ▶ West Virginia applied a “totality of the circumstances” test, noting most retirees, public and private, are taxed.

# DAWSON V. STEAGER

- ▶ Question presented: Whether the Supreme Court's precedent and the doctrine of intergovernmental tax immunity bar states from exempting groups of state retirees from state income tax while discriminating against similarly situated federal retirees based on the source of their retirement income.
- ▶ U.S. Solicitor argues that federal marshals are similarly situated to state police, ergo, should have been entitled to an exemption.
- ▶ Currently, petitioners' brief on the merits is due on August 28, 2018 and respondent's brief on the merits is due on October 16, 2018.



# *Associated Bank, N.A. and Affiliates v. Commissioner of Revenue*

Minn. S.Ct. No. A17-0923 [July 5, 2018]

- ▶ Associated Bank, N.A. (the Bank) was a member of two related Wisconsin limited liability companies (each an LLC and collectively the LLCs) that were not financial institutions.
- ▶ The Bank paid Minnesota corporate franchise tax on the LLCs' flow-through income, but applied apportionment methods different from the Bank's to the LLCs' income.
- ▶ The financial institutions' apportionment formula (applicable to the Bank) included loan interest and intangible property.
- ▶ The general apportionment method (applicable to the LLCs) did not.

# *Associated Bank, N.A. v. Minnesota*

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- ▶ The LLCs reported an overall apportionment factor of zero and the Bank's sales factor excluded Minnesota loan interest earned by the LLCs, and its property factor excluded the LLCs' Minnesota loans' value.
- ▶ Minnesota's Commissioner determined that the application of the general apportionment formula did not fairly reflect the Bank's Minnesota taxable net income.
- ▶ Under Minn. Stat. Sec. 290.20, the Commissioner applied an alternative apportionment method and, in effect, treated the LLCs as financial institution, and included in the Bank's Minnesota apportionment calculation each LLC member's pro-rata share of the property and payroll factors.

# Associated Bank, N.A. v. Minnesota

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- ▶ ***“The Commissioner present[ed] substantial evidence that the method prescribed does not show, to a full degree or extent, all or any part of the taxpayer’s income arising from taxable business activities in Minnesota.”***
- ▶ Court determined that the Commissioner's alternative apportionment method fairly reflected the Bank's net income from the LLCs' Minnesota business activities.
- ▶ The statutory language of the alternative apportionment provisions is broad and requires only that the Commissioner use "another method" that "fairly reflects net income."

# LABELL V. CITY OF CHICAGO

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Circuit Court (Illinois), Cook County, 15 CH 13399, May 24, 2018

- ▶ City of Chicago has extended a tax on entertainment services to online streaming services.
- ▶ Cook County Circuit Court found the extension of the 9% amusement tax did not violate the US Commerce Clause nor the Illinois uniformity clause.
- ▶ It also held an amusement tax on streaming services is not violate The Tax Freedom Act, which prohibits taxation of activities/products carried over the Internet that are not taxed in other forms.

*IN THE MATTER OF THE PROTEST  
OF GENERAL ELECTRIC COMPANY & SUBSIDIARIES v.  
NEW MEXICO TAXATION AND REVENUE DEPARTMENT*

D&O No. 18-12 April 6, 2018

- ▶ The Tax Cuts and Jobs Act provides for a one-time deemed repatriation of income, as well as a new tax on global intangible low-taxed income, or GILTI.
- ▶ New Mexico Administrative Hearings Office affirmed the Taxation and Revenue Department's assessment based on General Electric's exclusion of foreign dividend and Subpart F income from its base income in its New Mexico consolidated return.
- ▶ The Hearings Office determined that the inclusion of dividends and Subpart F income from foreign subsidiaries in General Electric's state tax base did not violate the Foreign Commerce Clause, even though dividends from domestic affiliates were excluded from the state tax base, because General Electric filed on a consolidated group basis with its domestic affiliates.

# AND MORE

- ▶ US Supreme Court:
  - ▶ *Washington State Dept. of Licensing v. Cougar Den, Inc.*, No. 16-148
  - ▶ *Franchise Tax Board v. Hyatt*, No. 17-1299
- ▶ States:
  - ▶ *Tetra Tech EC Inc. & Lower Fox River Remediation LLC v. Dep't of Revenue*, Wisconsin Supreme Court, Case No.: 2015AP2019 [6/26/18]
  - ▶ *Kraft Global Foods, Inc. v. Division of Taxation*, N.J. App., No. A1157-1671 [5/17/18].
  - ▶ *Trader Joe's East, Inc. v. Commissioner, Georgia Dept. of Revenue*