

Chapter 9: Taxable Sales

USE TAXES, ETC.

Silas Mason Co.

300 U.S. 577 (1937), P. 9-3

- **Facts:** The State of Washington imposes a 2% use tax (\$18,424) on equipment (\$.9 million) brought into the State by the Tp for the purpose of constructing the Grand Coolee Dam on the Columbia River.
- **Issue:** Is the tax unconstitutional as burden on Interstate Commerce or an indirect tax on imports?
- **Holding:** No, the tax is a reasonable levy on the use of property in the state after its importation and simply equalizes the tax with residents who pay the sales tax.

McLeod v. J.E. Dilworth

322 U.S. 327 (1944), P. 9-19

- **Facts:** Tp sells machinery and mill supplies in Tennessee, where it has its headquarters. It also takes orders for sales in Arkansas, with title passing in Tennessee. Arkansas imposed a sales tax on the sales into Arkansas. It sends salesmen to Arkansas.
- **Issue:** Does a sales tax on sales of goods ending up in a state violate the Commerce Clause if the sale is concluded outside the state?
- **Holding:** Yes. Dissent argues that if a use tax would be fine, then a sales tax should be fine.

General Trading Co.

322 U.S. 335 (1944), P. 9-24

- **Facts:** Tp, headquartered in Minnesota, has traveling salesmen in Iowa who take orders for sales consummated in Minnesota. Iowa imposes a use tax on the sales.
- **Issue:** Does the use tax violate the Commerce Clause?
- **Holding:** No. A use tax is okay, even though a sales tax would be unconstitutional.
- **Note:** J. Frankfurter wrote the opinion in this case and in *Dilworth*.

Bloomington Brothers

505 N.Y.S2D 258 (1986), P. 35

- **Facts:** NY tp sells goods at its branch stores in other states to nonresident customers, for shipment to New York as gifts.
- **Issue:** Can the sales be taxed under the NY statute and the U.S. Constitution?
- **Holding:** Not taxable under a “plain” reading of the statute, so constitutional issue not reached. Dissent would hold taxable under the statute and concludes that the constitution is no bar to the tax.

Miller Brothers

347 U.S. 340 (1954), P. 9-39

- **Facts:** Miller Brothers operates a store in Wilmington, Delaware, where it sells furniture, appliances, and other goods. It advertises to Maryland customers. Some goods are sold cash-and-carry to Md. customers, some are delivered by common carrier, and some by the tp’s own trucks. Maryland requires tp to collect the use tax due from Md. customers.
- **Issue:** Does the Due Process Clause prevent Md. from requiring Miller Bros. to collect the tax.
- **Holding:** Yes. Dissent says nexus aplenty.

Scripto, Inc.

362 U.S. 207 (1960), P. 9-44

- **Facts:** Scripto, a Georgia company, sells writing instruments in Florida through 10 salesmen. The salesmen are “independent contractors” rather than employees and get a commission on sales. Florida requires the tp to collect its use tax on sales into Florida.
- **Issue:** Does the Constitution (Commerce? Due Process?) prevent Florida from making Scripto collect the use tax?
- **Holding:** No, rewriting *Miller Bros.*

Borders Online

129 CAL APP. 4TH 1179 (2005), P. 9-47

- **Facts:** Borders Online sold books, music CD, etc., into California but had itself no physical presence in the State. Its sister company, Borders, had stores all over California. Borders took returns for cash refunds on Online sales and otherwise promoted sales by Online in the State.
- **Issue:** Is Borders a sales representative of Online for purposes of the Cal. Statute, and does it provide substantial nexus under the Commerce Clause?
- **Holding:** Yes to both questions.

National Geographic

430 U.S. 551 (1977), P. 9-56

- **Facts:** National Geographic ran a mail order business in California, out of its Washington, D.C. office. It also had two offices in California that did \$1 million of sales of advertising for its magazine but did not get involved in the mail order business.
- **Issue:** Does the tp have substantial nexus for Commerce Clause and Due Process purposes?
- **Holding:** Yes. Concurring opinion would “let *Miller Bros. go*”.

Quill Corp. (Revisited)

540 U.S. 298 (1992), P. 9-65, 3-18 (OPINION)

- **Facts:** Quill made mail order sales of office supplies into North Dakota. Its economic penetration into the state was substantial. But its contacts with the state, aside from some *de minimis* contacts, was by mail or common carrier.
- **Issue:** Does North Dakota have nexus to tax under Due Process and Commerce Clause?
- **Holding:** Yes for Due Process Clause, no for Commerce Clause.

Armco v. Hardesty

467 U.S. 638 (1984), P. 9-83

- **Facts:** West Virginia imposes a .27% wholesale tax on all wholesale sales in the state except for sale by W.VA. manufacturers. The manufacturers are subject to a manufacturing tax of .88%. Armco, a nonresident company, is subject to the withholding tax.
- **Issue:** Does the withholding tax, which exempts local manufacturers, violate the Commerce Clause or is it saved b/c the local manufacturers are subject to a higher tax?
- **Holding:** Unconstitutional. The taxes are separate.

Tyler Pipe v. Washington

483 U.S. 232 (1987), P. 9-88

- **Facts:** Washington imposed a B&O (Business & Occupation tax on the gross receipts from sales, etc., in the State. It also imposed a manufacturers excise tax on those not subject to the B&O tax — i.e., manufacturers selling outside the State. The B&O tax applied to Tyler Pipe because of nexus created by one independent representative.
- **Issue:** Does the B&O tax violate the Commerce Clause (even if not facially) and is their nexus?
- **Holding:** Yes to both.

Goldberg v. Sweet

488 U.S. 252 (1989), 9-101

- **Facts:** Illinois imposes a 5% tax on charges for telephone calls billed to an Illinois service address. It offers a credit for taxes paid to another state for calls billed to a home address.
- **Issue:** Does the tax violate the Commerce Clause on account of not being fairly apportioned and discriminating against interstate commerce?
- **Holding:** No

Jefferson Lines

514 U.S. 175 (1995), P. 9-108

- **Facts:** Oklahoma taxes in-state sales of goods and services, including the sale of bus tickets for travel originating in OK and ending outside the State. Tax collected on sales for purely in-state travel but not for travel originating in OK and ending outside.
- **Issue:** Can Oklahoma impose an unapportioned sales tax on the sale of tickets for travel originating in OK and ending outside the State?
- **Holding:** Yes, no serious risk of double taxation.

National Wine & Spirits

477 MICH. 1088 (2007), SUPP., P. 12

- **Facts:** Responding to the U.S. Supreme Court in *Heald*, Michigan enacted legislation that allows everyone to distribute wine in MI in an area where a previous permit has been granted only if they had been doing so before Sept. 24, 1996. By design, that class only includes Michigan distributors.
- **Issue:** Does this scheme violate the Commerce Clause?
- **Holding:** No. It is not discriminatory on its face and there are some State reasons for the plan.