

STATE and LOCAL TAXATION

Maximum Time: 3 hours
Maximum Points: 100

Monday, December 9, 1996, at 9:30 a.m.

Instructions

1. Write your **Exam Number**, the name of your instructor (McIntyre), and the name of this course (State & Local Tax) on the cover of your Bluebook. Please do this now. If you are typing your exam, you must put your Exam Number on the top right of every page and the name of the instructor and the name of the course on the first page.
2. Thank you for putting your **EXAM NUMBER** on the cover of your bluebook. (If you have not done so, please stop reading and do so now.) Please do **NOT** put your own name (or other personal information — e.g., LLM student, graduating senior) on your bluebook.
3. This is an **open book** examination. You are expected to have with you a copy of the Pomp & Oldman Casebook, Bulletin 95-1 issued by the Multistate Tax Commission and related materials, and the other handouts from the course. You are permitted to have any books, notes or other materials you have used during the course. You may use a pocket calculator. A copy of the *Camps Newfound/Owatonna* case is attached.
4. This examination has five (5) questions and a one-point extra credit question. Write neatly in your bluebook, observing the space limits. A substantial and proportionate penalty will be imposed for exceeding the space limits. (In practice, no penalty will be imposed if your answer exceeds the limit by no more than two lines.)
5. In writing in your bluebook, do not use the back side of the pages and please double space (that is, write on every other line). If you are typing, please leave big margins and double space.
6. **Note To Proctor:** Students may keep their copy of the Examination.

Questions

General Instructions. Answer the questions in your bluebook. Write in ink and do not write in the margins. The space limitations for questions in each part are stated below. Please be concise. Number your answers clearly!

Note to typists: 1 line of a bluebook is equivalent to 1 line of a typed page (8½" × 11") with 1½ inch margins (pica) or 2 inch margins (elite). This notice is typed with a pica font and has 1½ inch margins.

I. COMMERCE CLAUSE

(Maximum points: 35)

(Maximum Length: 2 bluebook pages, double spaced)

Assume that the U.S. Supreme Court has granted *certiorari* in the case of *Camps Newfound/Owatonna* (“Camps”) *v. Town of Harrison* (copy attached of opinion of Supreme Judicial Court of Maine in that case). The only issue before the Court is the Commerce Clause issue. As clerk for Justice Ginsberg, you have been asked to prepare a memo that supports the position of the Petitioner (“Camps”) but also notes the weaknesses, if any, in that position.

An *amicus* brief filed in support of Petitioner's request for *certiorari* asserts that the Court's opinion in the *Lynn Creamery* case requires a decision for Camps. That brief also analogizes the Maine taxing scheme to a state hotel tax that applies only to out-of-state guests, which the brief asserted would be clearly unconstitutional. Your memo should make appropriate reference to the points made in the *amicus* brief, although you are free to disagree, in whole or in part, with those points.

Question 1. Please prepare the requested memo.

II. SALES AND USE TAXES

(Maximum points: 20)

(Maximum Length: 2 bluebook pages, double spaced)

Ajax Enterprises is a small manufacturing company located in Coldwater, Michigan. It manufactures various types of unbreakable dish ware. Tom, the president of Ajax, received a call from Sally, the chief sales representative for Specialty Sales, an out-of-state vendor of various specialty items. Sally says that she has received an order from Ford Motor Company for 12 dozen plastic dinner plates. The plates are to have in the center an artist's sketch of

the new professional football stadium that is being planning for Detroit. She asks Tom if his firm can produce the plates and ship them directly to Ford. She will send by post a copy of the art work to be used. Tom agrees, for a price of \$1,000. He manufactures the plates as agreed and ships them to Ford. Sally sends Ford a bill for \$2,000 for the plates, which is promptly paid. At no time has Sally or any other employee of Speciality Sales set foot in Michigan.

Question 2 (10 points). Can Michigan require Specialty Sales to collect from Ford the State's six percent use tax on the purchase by Ford of the plates without violating the U.S. Constitution? Assume that the Michigan sales and use tax statute clearly requires collection of the use tax in these circumstances.

Question 3 (10 points). Assume that the answer in Question 2, above, is that Speciality Sales *cannot* be required to collect the Michigan six percent use tax. As a tax policy matter, should Michigan allow Ajax to avoid sales tax on the implicit sale of the plates to Specialty Sales under an exemption for exports or under an exemption for "sales for resale"? You should assume that the Michigan sales tax statute contains both of these traditional exemptions.

III. DESIGN OF SALES TAX

(Maximum points: 15)

(Maximum Length: 1 bluebook pages, double spaced)

A recent decision of a Michigan court held that the University of Michigan was not required to collect a sales or use tax with respect to amounts received from students from their use of coin-operated copying machines located in the various U-M libraries. Several thousands of dollars were at stake in the case.

Question 4. Assuming that the court has correctly interpreted the current Michigan statute, would you recommend, from the point of view of sound public policy, that the statute be amended to require collection of tax in such circumstances? Explain.

IV. CORPORATE TAX

(Maximum points: 30)

(Maximum Length: 2 bluebook pages, double spaced)

The State of Louisiana does not require a corporation operating within its borders to file a consolidated tax return with its related corporations. It is considering a change in that policy. The change currently under consideration would require a corporation engaging in business in Louisiana to file a consolidated return with its related domestic corporations if

those corporation are currently filing consolidated Federal tax returns or would qualify to file a consolidated Federal return. In general, the Federal consolidated return rules permit two or more related domestic companies to file consolidated returns if there is common ownership of 80 percent or more of their stock. For example, if P owns 80 percent of the stock of A and B, then P, A, and B would be eligible to file consolidated returns.

If the consolidated-return rule outlined above were adopted, Louisiana would then tax a portion of the aggregate income of the consolidated group, after eliminating intercompany transactions. The portion taxed would be determined by applying a three-factor apportionment formula (sales, payroll and property), using the factors of the consolidated group in the denominators and using factors located in Louisiana in the numerators.

Question 5. You have been hired as a consultant to the Department of Revenue and Taxation of the State of Louisiana. The Department has asked your opinion of the constitutionality and the advisability, from a public policy perspective, of the proposed statutory change. What advice do you give? Explain. You should feel free to suggest changes in the proposed statute if you believe such changes are needed to make it constitutional or desirable from a public policy perspective.

Extra Credit (1 point maximum). A powered watercraft used to move a barge on a river is generally called a _____. "Tugboat" is not an acceptable answer.