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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Attorneys React To Supreme Court 'Amazon Tax' Ruling

Law360, New York (March 04, 2015, 5:45 PM ET) -- On Tuesday, the U.S. Supreme Court ruled that reporting requirements for Colorado's "Amazon tax" law can be challenged in federal court without running afoul of the Tax Injunction Act. Here, attorneys tell Law360 why the decision in Direct Marketing Association v. Brohl et al. is significant.

Jay Adams, Jones Walker LLP

“The most interesting part of the decision for state and local taxpayers is Justice Kennedy’s concurrence. The concurrence clearly states Justice Kennedy’s thoughts on the vitality of the court’s prior decisions in Quill and Bellas Hess. I question whether Justice Kennedy’s concurring opinion provides a sufficient basis for a state court to reject the decisions in Quill and Bellas Hess, and their physical presence requirement, and thereby provide the court with the opportunity to reconsider those decisions, which Justice Kennedy would clearly welcome.”

Bill Backstrom, Jones Walker LLP

“The court gave us some useful guidance as to the limits of the TIA. What the court did not address is the limit of comity in state tax matters that are pursued in federal district court.”

Jennifer Benda, BakerHostetler

“[Tuesday]’s decision means DMA is one step closer to obtaining a ruling that Colorado’s 'Amazon tax' law violates the Commerce Clause. This would limit states’ ability to burden Internet sellers with compliance regimes meant to increase state use tax collections, currently limited because states lack easy access to information to enforce taxpayer compliance. While the court suggests that the Tenth Circuit may sidestep the issue based on comity doctrine, Justice Kennedy’s concurring opinion favors the states and hints that the court may be willing to require information reporting to assist in collection of use taxes given today’s technological environment.”

David Blum, Levenfeld Pearlstein LLC

“[Tuesday]’s highly anticipated opinion in Direct Marketing Association v. Brohl found that taxpayers may challenge the reporting requirements of Colorado’s 'Amazon tax' law without violating the Federal Tax Injunction Act. It essentially restricts the applicability of the Tax Injunction Act and makes clear that taxpayers have the right to use federal courts for such matters. From a jurisdictional perspective, it is

essential to know the circumstances under which one may pursue state tax disputes in federal court, and this opinion clarifies where those lines are drawn."

Julie Bradlow, Moore & Van Allen PLLC

"What is notable about the Supreme Court's decision [Tuesday] in Direct Marketing Association is Justice Kennedy's concurring opinion. It states that Justice Thomas' majority opinion on the Tax Injunction Act is 'complete and correct.' The concurrence also observes, however, that the court's majority opinion in Quill Corp. v. North Dakota, 504 U.S. 298 (1992), which affirmed the requirement that a business must have a physical presence in a state in order to be required to collect use taxes, may have been 'wrong when the case was decided,' setting the stage for an eventual challenge to the holding in Quill."

Jaye Calhoun, McGlinchey Stafford PLLC

"The court's holding that the TIA does not apply to bar challenges to Colorado's use tax reporting requirements is a favorable development for out-of-state vendors potentially subject to this burdensome law. However, one of the more interesting parts of this decision is Kennedy's concurrence where he calls upon the legal community 'to find an appropriate case' for the court to re-examine the current constitutional standards for state tax jurisprudence. This concurrence, while only Kennedy's voice, may signal a renewed interest at the court in streamlining state tax jurisprudence. Such a decision that takes into account fairness for both sellers and states as well as the complex and changing world of commerce today would be a step forward that could help both states and taxpayers gain greater clarity relating to state tax obligations."

Bruce P. Ely, Bradley Arant Boult Cummings LLP

"I think the Supreme Court's ruling [Tuesday] is absolutely correct. The Tenth Circuit went too far in applying the TIA and this latest ruling gives us state tax practitioners additional guidance. Perhaps the more notable aspect of the ruling, though, is Justice Thomas' and the majority's statements regarding 'the significant loss of tax revenue' suffered by the states due to the lack of a workable voluntary compliance system for Internet purchasers. I'll bet my old friend, Joe Huddleston [MTC executive director] was grinning like the Cheshire Cat as he read Justice Kennedy's urgent call for the court to revisit and likely reverse Quill. I suspect that if the court grants cert. in another case involving Internet retailers and nexus, Quill is toast."

David Fruchtman, Rimon PC

"The jurisdictional aspect of DMA notwithstanding, Justice Kennedy's concurring statement that 'The legal system should find an appropriate case for this court to re-examine Quill and Bellas Hess' is likely to be the most important component of DMA. Justice Kennedy states that — given the subsequent dramatic economic impact of the Internet — he no longer feels the need to wait for congressional action to reverse the physical presence requirement for a vendor to be required to collect a state's use tax. He is prepared, now, to hear a case that could result in the elimination of that requirement."

Lawrence Hill, Shearman & Sterling LLP

"The sales tax reporting requirements enacted by Colorado imposed onerous reporting obligations on out-of-state retailers that were not mandated for in-state businesses. The Supreme Court's decision

precludes states from unfairly discriminating against out-of-state retailers without impinging on the state's ability to collect taxes. The decision allows affected taxpayers to challenge discriminatory state taxing statutes in what may be perceived as the friendlier federal court forum, as opposed to relegating these disputes to the state courts. In arriving at its decision the court achieved an appropriate balance between a taxpayer's First Amendment rights and states' tax collection powers."

Stanley R. Kaminski, Duane Morris LLP

"In Direct Marketing Association v. Brohl, on the federal Tax Injunction Act, Justice Kennedy in a separate concurrence questioned the current Commerce Clause requirement that a retailer must have physical presence with the state to be subject to a state's sales/use tax. He believes the preeminent case on this issue, Quill v. North Dakota, may have been wrongly decided especially because of the Internet and the current state of technology. He states that 'Given these changes in technology and consumer sophistication, it is unwise to delay any longer a reconsideration of the court's holding in Quill.'"

Bradley R. Marsh, Greenberg Traurig LLP

"The Tax Injunction Act has, since its enactment, kept state and local tax cases with significant federal issues out of federal courts. This means that state courts, which are commonly perceived as favoring their particular state, are issuing what many believe to be incorrect and biased decisions interpreting federal law. While the Supreme Court's decision does not significantly limit this continuing effect of the Tax Injunction Act, it does at least give taxpayers the tool to challenge some unconstitutional state and local tax issues, such as the notice and reporting requirements instituted in Colorado, in a federal court."

Charles Rothfeld, Mayer Brown LLP

"[Tuesday]'s decision, which gives the Tax Injunction Act a narrow reading, is not surprising, and will make it easier to challenge state laws designed to facilitate tax collection. Perhaps the most notable thing about the decision is the separate concurrence by Justice Kennedy, which urged the court to reconsider the Quill decision in an appropriate case; if that were to happen, it would greatly diminish the competitive advantage that Internet sellers have over their brick-and-mortar competitors, and the prospect of a successful challenge to Quill could spur congressional legislation permitting the imposition of state sales tax on some Internet sales."

Jeffrey Vesely, Pillsbury Winthrop Shaw Pittman LLP

"This case will likely not open up the floodgates to federal courts in state tax cases. The court's opinion is narrowly limited to looking at the specific language of the Tax Injunction Act. Notably, the court did not reach the comity issue and remanded consideration of that issue to the Tenth Circuit which had stated in dicta that 'the comity doctrine also militates in favor of dismissal.' Given that DMA has a pending action in Colorado state courts, it will be interesting to see what the Tenth Circuit does on remand."