Journal of Multistate Taxation and Incentives
Volume 24, Number 6, September 2014

U.S. SUPREME COURT UPDATE

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Supreme Court to Hear Three State Tax Cases

The Supreme Court is set to hear three state tax cases during its 2014-2015 term. The three cases, *Alabama Department of Revenue v. CSX Transportation, Inc.; Comptroller of the Treasury of Maryland v. Wynne; and Direct Marketing Association v. Brohl*, each raise state sovereignty issues. All of these cases are highlighted below, including the brief recently filed by Maryland in *Wynne.*

During the summer recess, the Court received a petition for certiorari involving a challenge to state ad valorem delinquency penalties and payment-under-protest provisions. The Court also received a petition for certiorari in a federal tax matter that will be of interest to state and local tax practitioners that involves a summons served by the government on a taxpayer's bank account during an income tax audit for the purpose of determining the taxpayer's tax liability. As in federal tax matters, state tax departments often serve subpoenas on third parties, including banks and credit card companies for records to assist auditors in income and other tax audits.

And in another newly filed petition for certiorari, the Court has been asked to review a case about whether the federal government can subsidize through tax credits health care insurance for individuals enrolled on federally run exchanges under the Affordable Care Act ("Obamacare"), after two lower court rulings resulted in split decisions. Although this case involves the validity of a rule promulgated by the Internal Revenue Service, the legal issue extends to state and local taxation, namely, whether a taxing authority can by regulation extend or expand eligibility for refundable tax credits when the governing statute is ambiguous on the question.

We also await the Court's decisions on whether to grant two previously filed requests for certiorari, *India Lynch* and *Missouri Gas Energy*, the latter of which is scheduled for conference at the end of September.

Challenge to New Orleans Ad Valorem Delinquency Penalties and Pay-Under-Protest Law

In *Jackson v. City of New Orleans*, Docket No. 14-20, petition for cert. filed 7/3/14, ruling below at 2012-2742 La 1/28/14, 2014 WL 341020 (Jan. 28, 2014), the Supreme Court of Louisiana, with one dissent, affirmed a lower court's grant of summary judgment, invalidating a New Orleans City Ordinance (Ordinance Number 22207; the "Ordinance") that authorized the imposition of penalties and collection fees on delinquent ad valorem taxpayers. Both the lower court and the state's high court found that the Ordinance was contrary to Louisiana's constitutional requirements for tax collection that permit government subdivisions to exclusively sell the property for taxes, interest and costs.

Despite invalidating the Ordinance's penalty and fee provisions, however, the Louisiana courts held that two of the taxpayers had no cause of action because they failed to pay the penalties and fees under protest, as mandated by the Ordinance. Those taxpayers now challenge the court's dismissal and ask the U.S. Supreme Court to rule that New Orleans's post-deprivation relief procedures fall short of minimum procedural due process requirements under the U.S. Constitution and that repayment of any wrongly collected penalties and fees is required.

The plaintiffs. According to the Louisiana Supreme Court, the three taxpayer plaintiffs untimely paid ad valorem taxes to the City of New Orleans ("City") on their respective Orleans Parish properties. The taxpayers were then assessed penalties, fees, and interest on their late payment, including a penalty to defray the costs of collection. One of the plaintiffs paid the penalties under protest, along with the taxes and interest, while the other plaintiffs failed to follow the City Ordinance's payment-under-protest provisions. The three plaintiffs filed a class action suit against the City, seeking a declaration that the Ordinance which authorized the collection of penalties, fees, and interest violates the statutes and constitution of Louisiana and the U.S. Constitution. The action also sought a refund of any penalties, fees, and interest paid under the Ordinance.

The City took the position that the Ordinance was constitutional. It also argued that the two taxpayers who failed to follow the payment-under-protest provisions had no cause of action and that their suit must be dismissed.

Exclusivity of tax sales under Louisiana's Constitution. New Orleans Code Sections 150-46 through 150-52 (as enacted by Ordinance Number 22207) provide in part that ad valorem taxes "become delinquent

thirty days after receipt of the tax bill" and that delinquent taxes incur "a delinquency penalty of ten percent per annum from the date of delinquency until paid." Additionally, the Ordinance provides that New Orleans "may contract with a collection agency, law firm or private attorney for legal, collection, and other services related to the collection of the delinquent taxes" and impose "a collection fee of nine and one-half percent" on the taxpayer in order to recoup the cost of collecting delinquent ad valorem taxes.

The taxpayers argued that these penalties and fees contravene Louisiana's constitutional requirements for tax collection (Louisiana Constitution, Article VII, Section 25(A)(1)), that exclusively provide for tax sales, stating in relevant part as follows: "There shall be no forfeiture of property for nonpayment of taxes. However, at the expiration of the year in which the taxes are due, the collector, without suit and after giving notice to the delinquent in the manner provided by law, shall advertise for sale the property on which the taxes are due."

The Supreme Court of Louisiana agreed with the taxpayers. Citing to an earlier decision by the court in *Fransen v. City of New Orleans*, 988 So 2d 225 (La. 2008), that examined the constitutionality of the predecessor penalty provision to the Ordinance, and to Article VII, Section 25 of the Louisiana State Constitution, the court ruled that "any methods of collecting delinquent ad valorem taxes other than by tax sales is constitutionally prohibited." And, it further found that "any penalty or collection fee designed to allow the wholesale outsourcing of a government tax collector's responsibility to collect ad valorem taxes is unconstitutional." As a result, the court found no basis to uphold the nine and one-half percent collection fee.

In this regard, the court also dismissed the City's argument that the collection fee constituted recoverable costs incurred in conducting a tax sale. The court noted that the imposition of a nine and one-half percent penalty on each delinquent ad valorem taxpayer is not connected to *actual* costs incurred, as required in order for the City to be allowed to recoup costs incurred in conducting a tax sale. The Louisiana Supreme Court therefore affirmed the district court's ruling as to the unconstitutionality of the City Ordinance.

Constitutionality of post-deprivation relief. As noted above, two of the taxpayers in the case failed to comply with the Ordinance's payment under protest provisions to contest the imposition of penalties and collection fees assessed on delinquent ad valorem taxes. Accordingly, the district court granted the City's exception of no cause of action and dismissed those taxpayers' claims. The Louisiana Supreme Court affirmed the lower court's dismissal of these taxpayers.

Citing to *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco*, 496 US 18, 110 L Ed 2d 17 (1990), the Louisiana Supreme Court noted that "[t]o ensure a state's ability to engage in sound fiscal planning, the U.S. Supreme Court has approved the use of post-deprivation relief in taxation disputes, as long as the post-deprivation relief is meaningful, such as when a refund is provided to a successful taxpayer." Moreover, "[a] state may impose various procedural requirements on actions for post-deprivation relief, such as: (1) that only taxpayers paying under protest would be entitled to relief, and (2) that actions could be subject to short statutes of limitation."

According to the court, New Orleans's payment-under-protest provisions satisfied these policies. In particular, the court noted that the Ordinance and the applicable regulations provide that, if a taxpayer follows the procedures set forth and prevails in her suit, the taxing unit shall refund the amount held in the escrow account to the taxpayer with interest. As a result, the court found the City's payment-under-protest provisions to be a valid form of post-deprivation relief.

The taxpayers further argued that "the City should be estopped from enforcing the payment-under-protest laws because, the City utilized an unpublicized and allegedly discriminatory process to waive the imposition of delinquency penalties and collection fees for select taxpayers, and that the City's utilization of a payment-under-protest procedure was unconstitutional, as applied, on the basis of equal protection and due process considerations, because the City granted waivers to select taxpayers and did not make the waiver process available to the taxpayers or to the public at large."

The Louisiana Supreme Court, however, dismissed these arguments. According to the court, the arguments were "essentially further substantive assertions of unconstitutionality, which go to the merits of the legality of the delinquency penalties and collection fees and have no bearing on the procedural prerequisites for bringing an action on the legality of these penalties and fees." Thus, the court sustained the City's exception of no cause of action for the taxpayers who failed to comply with New Orleans's payment-under-protest requirements.

Questions presented. "1. Whether the post-deprivation pay-under-protest procedures suggested by *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 19 (1990) were ever meant to displace procedural due process analysis under all circumstances in all tax cases."

"2. Whether the post-deprivation pay-under-protest procedures suggested by *McKesson, id.*, were ever meant to apply to unconstitutional government penalties and to non-governmental outside contractors/collection attorneys' penalties."

"3. Whether the post-deprivation pay-under-protest procedures were ever meant to foreclose a taxpayer's equal protection challenge to an off-the-book parallel stealth waiver process that did not require payment under protest."

Challenge to IRS Summons Served on Taxpayer's Bank

In *Masciantonio v. United States*, Docket No. 14-43, petition for cert. filed 7/2/14, ruling below at 111 AFTR 2d 2013-2322 (3d Cir. 2013), the Court of Appeals for the Third Circuit affirmed a district court's order granting the government's motion to enforce an Internal Revenue Service ("IRS") summons served on a taxpayer's bank for the purpose of determining the taxpayer's income tax liability during the course of an audit.

The summons. As part of an audit of Masciantonio's 2010 and 2011 income tax returns, the IRS requested various bank records from Mr. Masciantonio in order to determine his tax liability (i.e., the correctness of claimed Schedule C income and expenses). Mr. Masciantonio provided some bank statements; however, he informed the IRS that he could not afford to pay for a complete set of the requested records.

As a result, the IRS issued an administrative summons to Mr. Masciantonio's bank for the records. In response, Mr. Masciantonio filed a petition to quash the summons with the District Court for the Western District of Pennsylvania. The district court issued an order denying Masciantonio's petition, and granting the government's motion to enforce the summons.

IRC Section 7602. The Third Circuit explained that "Section 7602(a) of the Internal Revenue Code ("IRC") authorizes the IRS to issue a summons '[f]or the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax..., or collecting any such liability.'" Furthermore, as outlined in *United States v. Powell*, 14 AFTR 2d 5942, 379 US 48, 13 L Ed 2d 112, 64-2 USTC ¶9858, 1965-1 CB 547 (1964), the circuit court noted that in order "to establish a prima facie case for the legality of a summons, the IRS must show that: (1) the investigation will be conducted pursuant to a legitimate purpose; (2) the inquiry may be relevant to the purpose; (3) the information sought is not already within the Commissioner's possession; and (4) the administrative steps required by the IRC have been followed." And, furthermore, "once the IRS has made its prima facie case, the taxpayer bears the burden of disproving any one of the four *Powell* elements or otherwise demonstrating that "enforcement of the summons will result in an abuse of the court's process (citing *U.S. v. Rockell Int'l,*65 AFTR 2d 90-833, 897 F2d 1255, 90-1 USTC ¶50151, 1262 (3rd Cir. 1990)."

Relying on the *Powell* test, the court determined that the IRS made a prima facie case for the legality of its summons. The burden was therefore on Masciantonio to disprove one of the four *Powell* elements.

Challenging the first prong of *Powell*-a legitimate investigative purpose-Masciantonio argued that the summons was issued in bad faith because his tax returns were selected for audit by a field office based solely on his proximity to that office. The court, however, disagreed. According to the circuit court, a good faith inquiry satisfies the first prong of *Powell.* And based on the sworn declaration of an IRS agent-that she issued the summons to determine the correctness of Masciantonio's 2010 and 2011 tax returns and corresponding tax liabilities-the court determined that the IRS had made a good faith inquiry under 26 U.S.C. § 7602(a).

Further, Masciantonio admitted in his petition to quash the summons that he had been informed by the IRS that his tax return was selected through a computer-generated process, as opposed to based solely on his proximity to an IRS office. Thus, the circuit court found that the summons was issued for a legitimate purpose, and not in bad faith.

Masciantonio also argued that the IRS failed to provide him with advanced notice-as is required under 26 U.S.C. § 7602(c)-that a third-party bank would be contacted as part of the IRS's investigation. But as noted by the court, prior to the issuance of the summons, Masciantonio had informed the IRS that he was unwilling to incur the costs of obtaining his records. In turn, the IRS told Masciantonio that the records could be summoned at the government's expense. Masciantonio then sent the IRS a letter indicating that he would not pay to obtain the bank records. This, according to the court, constituted "reasonable notice" under § 7602(c) that Masciantonio's records would be summoned by the IRS.

Lastly, Masciantonio argued that enforcing the summons would violate the protections granted by the Fourth and Fifth Amendments to the U.S. Constitution. Citing to *United States v.Miller*, 37 AFTR 2d 76-1261, 425 US 435, 48 L Ed 2d 71, 76-1 USTC ¶9380, 1976-1 CB 535 (1976) and *Fisher v. United States*, 37 AFTR 2d 76-1244, 425 US 391, 48 L Ed 2d 39, 76-1 USTC ¶9353, 1976-1 CB 411 (1976), however, the circuit court noted that the Supreme Court has already rejected these arguments. The court, therefore, affirmed the district court's order denying Masciantonio's petition to quash the summons and granting the government's motion to enforce.

Questions presented. Masciantonio now presents three questions for review to the U.S. Supreme Court:

"1. Whether, despite the Internal Revenue Service mandate to enforce the law with "integrity and fairness to

all" engages [*sic*] in impermissibly arbitrary and discriminatory conduct amounting to disparate treatment when it targets taxpayers based upon their zip code and their distance from the IRS field office of a given area?"

"2. Should the Supreme Court revisit whether the Fourth; Fifth and Ninth Amendments to the constitution afford protection to a taxpayers private bank dealings when forced with an Internal Revenue summons challenged by `bad faith'?"

"3. Whether an evidentiary hearing or at least limited discovery remains available to a taxpayer faced with an Internal Revenue summons challenged upon procedural due process, substantive due process equal protection as privacy grounds?"

Challenge to ACA Tax Subsidies

On July 22, in *King v. Sebelius*, the U.S. Court of Appeals for the Fourth Circuit examined whether an IRS regulation, providing that individuals purchasing private health insurance in both federal and state-run exchanges are eligible for tax subsidies (26 C.F.R. § 1.36B-1(k)(2012); the "IRS Rule"), is a valid interpretation of the Affordable Care Act ("ACA"). The circuit court found that because the ACA is "susceptible to multiple interpretations," it is ambiguous. Consequently, the court was bound by legal precedent to uphold the IRS Rule so long as it was found to be a reasonable one.

Ultimately, the court found that the IRS's interpretation that tax subsidies were meant to be available to individuals in both federal and state-run exchanges was a reasonable one, in line with the goals of the ACA, and upheld the IRS Rule. On July 31, the plaintiffs challenging the IRS Rule asked the U.S. Supreme Court to review the Fourth Circuit decision.

On the same day that the Fourth Circuit issued its decision in *King*, a three judge panel for the U.S. Court of Appeals for the District of Columbia Circuit, in *Halbig v. Burwell*, ruled in a 2-1 decision that the language in the ACA dealing with tax subsidies plainly and unambiguously restricted the IRS's authority to promulgate the IRS Rule that provided for subsidies in state-run exchanges; thus creating a split among the circuits.

However, since the *Halbig* decision was reached only by a three-judge panel, the case may be heard en banc by the full U.S. Court of Appeals for the District of Columbia Circuit, which could reverse the ruling and eliminate the split among the circuits. The Supreme Court will likely wait for the results of any appeal in *Halbig* before making its decision on whether to grant the petition for certiorari in *King.*

Question presented. "Whether the Internal Revenue Service may permissibly promulgate regulations to extend tax-credit subsidies to coverage purchased through Exchanges established by the federal government under section 1321 of the ACA."

State Tax Cases to Be Heard By Court This Term

As mentioned above, the Supreme Court already is set to hear three state tax cases during its 2014-2015 term.

Maryland's brief in *Wynne*. In *Comptroller of the Treasury of Maryland v. Wynne*, Docket No. 13-485, cert. granted 5/27/14, ruling below at 64 A3d 453 (2013), the Maryland Court of Appeals (the state's highest court) held that Maryland's credit against Maryland state income tax for income taxes paid to other states violated the Commerce Clause of the U.S. Constitution because the credit was not available to offset county-level income taxes.

The Maryland court analyzed the taxpayers' challenge to the statute granting the credit under the dormant Commerce Clause test announced in *Complete Auto Transit, Inc. v. Brady*, 430 US 274, 51 L Ed 2d 326 (1977), whereby a state tax will pass constitutional muster if the tax: (1) applies to an activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3) does not discriminate against interstate or foreign commerce; and (4) is fairly related to the services provided by the state. Focusing on the requirements of fair apportionment and no discrimination against interstate commerce, the Maryland court found that the lack of a credit against the county tax resulted in the tax's failing both prongs.

Maryland petitioned the U.S. Supreme Court for review, and on April 4, 2014, the U.S. Solicitor General submitted an amicus brief (2014 WL 1348934) in response to the Court's Jan. 13, 2014, invitation to express the views of the federal government. In line with the U.S. Solicitor General's request that the Court grant the petition for certiorari (and reverse the lower court's ruling), the Court granted certiorari.

On July 29, 2014, Maryland filed its merits brief with the Court, also urging the Court to reverse the lower court's ruling. Maryland raises two principal arguments in its brief. First, Maryland argues that the U.S. Supreme Court has long recognized "the rule, accepted interstate and internationally, that a sovereign may tax the entire income of its residents. *Oklahoma Tax Comm'n v. Chickasaw Nation,* 515 US 450, 132 L Ed 2d 400, 453 (1995)." According to Maryland, this "broad taxing power over their residents' income is justified because it corresponds to the extraordinary benefits that states grant to those residents." Maryland argues

that its taxing regime was designed to "assure that all Maryland residents contribute at least some income taxes to the funding of these far-reaching benefits."

Further, the state contends that "[b]y compelling Maryland to give a full credit for tax payments to other states - that is, a credit that could be applied against the County tax as well as the State tax - the lower court's ruling would have the perverse effect of allowing certain taxpayers to enjoy all the benefits available to Maryland residents without contributing any income taxes in return." Moreover, as discussed more fully below, the "lower court's ruling wrongly demands that Maryland yield in the exercise of its taxing authority to other sovereigns, even though Maryland provides extensive benefits (free public schooling, public assistance, etc.) that those other sovereigns do not provide to Maryland residents."

Maryland also argues that state residents that take issue with Maryland's taxing scheme have the political capacity, as eligible Maryland voters, to vote and change unpopular laws. This situation is contrary to that of nonresidents who do not have a voice in government to protect themselves from abusive laws. Consequently, according to Maryland, "[t]he court below thus not only misapplied an important body of constitutional law, but needlessly imposed a judicial solution to what is, at most, a political problem."

Second, Maryland claims in its brief that nothing in the U.S. Constitution requires a state to subordinate its own legitimate taxing authority over its residents to the taxing authority of other states in which its residents earn income. Maryland argues that "the U.S. Constitution does not impose an absolute prohibition on multiple taxation" and that the lower court incorrectly imported constitutional rules restricting multiple taxation into a domain where those restrictions do not apply-i.e., where two states are exercising an independent and legitimate basis for imposing tax. Maryland therefore asks the U.S. Supreme Court to reverse the lower court's judgment and find Maryland's tax scheme constitutional.

Finally, Maryland argues that "the Commerce Clause does not invalidate Maryland's tax system." In its brief, Maryland states that "the court's analysis [of the *Complete Auto Transit* discrimination and fair apportionment tests] was wrong on both counts" and explains how Maryland's tax scheme "does not exhibit any of the features that the Court has found to constitute discrimination under the dormant Commerce Clause" and "that the question of fair apportionment among competing states simply does not arise" when a state bases its taxing jurisdiction on an individual's residency. Maryland states "[i]n asking whether Maryland was taxing its fair share of the Wynnes' income, the court simply assumed that an individual tax based on residency had to be apportioned among different states. But there are no grounds for that assumption."

(For more on this case, including a discussion of Maryland's income tax scheme and a dissenting opinion in *Wynne*, see U.S. Supreme Court Update, 23 JMT 40 (February 2014). For an in-depth discussion of the U.S. Solicitor General's amicus brief, see U.S. Supreme Court Update, 24 JMT 39 (July 2014).)

***Direct Marketing Ass'n* Tax Injunction Act challenge.** As reported in last month's column, the Court has granted certiorari in *Direct Marketing Ass'n v. Brohl*, Docket No. 13-1032, cert. granted 7/1/14, ruling below at 735 F3d 904 (10th Cir. 2013), remanding *Direct Marketing Ass'n v. Huber*, No. 10-CV-01546-REB-CBS, 2012 WL 1079175 (D. Colo. March 30, 2012). In this case, the federal Court of Appeals for the Tenth Circuit overturned a district court's ruling that a Colorado law imposing information notice and reporting requirements on remote retailers violated the Commerce Clause of the U.S. Constitution. The circuit court remanded the case to the district court for dismissal on procedural grounds, finding that the Tax Injunction Act (TIA, codified at 28 USC § 1341), which provides that "the district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State," precluded federal court jurisdiction over the claims.

The plaintiff, the Direct Marketing Association (DMA), argues that because Colorado's notice and reporting law does not impose an obligation on vendors to pay or collect a tax, its suit challenging the constitutionality of those requirements is not barred by the TIA. Thus, the DMA asks the Supreme Court to clarify the scope of the TIA's application.

(For more on this case, including a detailed discussion of the Colorado notice and reporting requirements, see U.S. Supreme Court Update, 24 JMT 40 (May 2014). For more background, see also Hecht, "Information Reporting for Out-of- State Vendors Just as Unconstitutional as Tax Collection Responsibility," 22 JMT 6 (August 2012).)

***CSX Transportation* 4R Act tax discrimination challenge.** As also reported in last month's column, the Court has agreed to hear arguments in *Alabama Department of Revenue v. CSX Transportation*, *Inc.*, Docket No. 13-553, cert. granted 7/1/14, ruling below as *CSX Transportation, Inc. v. Alabama Department of Revenue*, 720 F3d 863 (11th Cir. 2013). In this case, Alabama has asked the Court to review the decision by the federal Court of Appeals for the Eleventh Circuit, which held that Alabama's failure to provide a tax exemption from the state's sales and use taxes for railroads' purchases of diesel fuel, while exempting both interstate motor carriers and water carriers, was discriminatory in violation of the federal Railroad Revitalization and Regulatory Reform Act of 1976 (the "4R Act," codified at 49 USC § 11501). This case is a continuation of litigation that was before the Court three years ago.

In granting the petition for certiorari, the Court asked the parties to brief and argue a question raised by the U.S. Solicitor General: "Whether, in resolving a claim of unlawful tax discrimination under 49 U.S.C. section 11501(b)(4), a court should consider other aspects of the State's tax scheme rather than focusing on the challenged tax provision."

(For more background on this request for certiorari, including a discussion of Alabama's tax scheme at issue, the procedural history of the litigation, and a dissenting opinion in this latest case, see U.S. Supreme Court Update, 23 JMT 40 (February 2014).)

Pending Petitions

Commerce Clause challenge to ad valorem tax on natural gas. We still await the Court's decision as to whether to review the petition for certiorari in *Missouri Gas Energy v. State of Kansas Div. of Property Valuation*, Docket No. 13-1216, petition for cert. filed 4/7/14, ruling below as *Appeals of Various Applicants From a Decision of Division of Property Valuation of State of Kansas for Tax Year 2009 Pursuant to K.S.A. 74-2438*, 313 P3d 789 (Kan. 2013).

In the case below, the Kansas Supreme Court affirmed in part and reversed and vacated in part a decision of the Kansas Court of Tax Appeals regarding ad valorem taxes imposed on natural gas stored in facilities located in Kansas and under contract with interstate pipeline companies. The Kansas high court held that at least some of the taxpayers qualified as public utilities (i.e., out-of-state local distribution companies certified as public utilities in their states) and, thus, their gas was not exempt from tax under the Kansas Constitution, Article 11, § 1, which exempts merchants' inventory from ad valorem taxation but does not exempt tangible personal property owned by a public utility. The court remanded the case for further proceedings to decide which of the taxpayers qualify as public utilities.

The court also held that the ad valorem gas tax does not violate the Commerce Clause or Due Process Clause of the U.S. Constitution. Several of the taxpayers have now petitioned the U.S. Supreme Court to review that holding, claiming that Kansas's tax unduly burdens interstate commerce.

(For more on this case, including a discussion of the Kansas Supreme Court's constitutional analysis, see U.S. Supreme Court Update, 24 JMT 39 (July 2014).)

Challenge to alleged racially discriminatory property tax. In *India Lynch v. Alabama*, Docket No. 13-1232, petition for cert. filed 4/10/14, ruling below as *I.L. v. Alabama*, 739 F3d 1273 (11th Cir. 2014), the federal Court of Appeals for the Eleventh Circuit considered a series of allegedly discriminatory property tax restrictions contained in the Alabama Constitution. The petitioners, black and white Alabama public school students, challenged state constitutional provisions dealing with both millage caps and property classifications, and argued that the provisions cripple the ability of certain rural, nearly all-black public schools in Alabama to raise necessary revenues.

With regard to the students' challenges to the millage caps, the circuit court remanded the case to the district court with instructions to dismiss the challenges without prejudice for lack of standing. As for the challenges to the property classification provisions, the court affirmed the district court's 804-page order concluding that the students had failed to show that the allegedly discriminatory provisions were unconstitutional. The petitioners have asked the U.S. Supreme Court to review both the circuit court's ruling as to standing and to decide the correct constitutional standard for reviewing the allegedly discriminatory provisions of Alabama's Constitution.

(For more on this case, including a detailed discussion of the ruling below and an examination of standing and the Tax Injunction Act, see U.S. Supreme Court Update, 24 JMT 39 (July 2014).)