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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Docket No. 2015-CA-00600

MISSISSIPPI DEPARTMENT OF REVENUE
F/K/A MISSISSIPPI STATE TAX COMMISSION **APPELLANT**

VS.

AT&T CORP. **APPELLEE**

ON APPEAL FROM THE CHANCERY COURT
OF HINDS COUNTY, MISSISSIPPI
CAUSE NO. G2004-1393

BRIEF OF *AMICUS CURIAE* COUNCIL ON STATE TAXATION IN SUPPORT OF APPELLEE AT&T CORP.

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Council On State Taxation ("COST") is a non-profit trade association based in Washington, D.C. and was organized in 1969 as an advisory committee to the Council of State Chambers of Commerce. Today COST has grown to have an independent membership consisting of nearly 600 of the largest multistate corporations engaged in interstate and international commerce, many of whom do business in Mississippi. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multi-jurisdictional business entities.

The case at bar addresses important issues regarding all multijurisdictional taxpayers' rights under the Commerce Clause of the United States Constitution, U.S. Const. art. I, § 8, cl. 3. The broader implications of these issues far exceed the significance of the case to the private parties who litigated in the trial court and before this Court, as evidenced by the national interest these issues have garnered over the years.[1]

As a longstanding policy, the Department excludes dividends a parent receives from subsidiary corporations doing business in Mississippi that also file Mississippi returns. However, negatively affecting *amicus's* membership, if dividends are from subsidiary corporations not doing business in Mississippi, those dividends are included in the parent's gross income for calculating that corporation's Mississippi income tax. Thus, based on the location of the subsidiary corporation alone, the dividends from a subsidiary are either included or excluded from gross income. AT&T Corp ("AT&T") received dividends from subsidiary companies not

[1] *See, i.e.,* Richard W. Genetelli and David B. Zigman, *During a Turbulent Economy, Intercompany Transactions Become Focal Point of State Tax Planning, Audit Activity*, 2009 Tax Mgmt. Weekly State T. Rep. 5 (2009) ("[I]ntercompany transactions between members of a combined or consolidated income tax return at the state level are generally eliminated in computing the tax base. However, . . the states have focused on alternative methods to combination or consolidation to reattribute income and expenses among related entities.).

doing business in Mississippi and upon audit, was assessed additional income taxes based on those dividends for the 1997, 1998, and 1999 tax years. This litigation ensued.

Like AT&T, many of *amicus's* members conduct business in Mississippi and are Mississippi income taxpayers who receive dividends from subsidiaries that may not be doing business in Mississippi or filing returns in Mississippi. Thus, they are directly impacted by the outcome of this case. *Amicus's* members could be forced to include those dividends as part of their taxable income. Some of *amicus's* members already have cases pending below, while others are currently under audit or subject to audit by the Mississippi Department of Revenue. As such, *amicus's* members have a direct interest in addressing this Court on the important issues raised by this case, including the corresponding outcome of this case.

BRIEF OF *AMICUS CURIAE*

I. Denying a dividend received exclusion based on the payor not being a Mississippi taxpayer is facially discriminatory.

In 2015, the U.S. Supreme Court, in extending Commerce Clause protections to individuals subject to a state's income tax based on residency, reaffirmed that "[a]lthough the Clause is framed as a positive grant of power to Congress, we have consistently held this language to contain a further, negative command, known as the dormant Commerce Clause, prohibiting certain state taxation even when Congress has failed to legislate on the subject." *Comptroller of Treasury of Maryland v. Wynne*, 135 S.Ct. 1787, 1794 (2015) (internal quotations omitted) (citing *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179 (1995)). Thus, the Commerce Clause has been interpreted to impose negative restraints upon state action. *Quill Corp. v. North Dakota,* 504 U.S. 298, 309 (1992). In *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), a landmark case reviewing this State's gross receipts tax, the U.S. Supreme Court established a four-prong test for a state tax to withstand a Commerce Clause

challenge. To overcome such a challenge the tax must: (1) be applied to an activity that has substantial nexus with the taxing state, (2) be fairly apportioned, (3) *not discriminate against interstate commerce*, and (4) be fairly related to the services provided by the taxing state. *Id.* at 279 (emphasis added).

One of the main *Complete Auto* prongs implicated in this case is whether Mississippi's law providing favorable treatment to dividends received from subsidiaries doing business in Mississippi discriminates against interstate commerce. The roots of the U.S. Supreme Court prohibition on such discrimination run deep. The Court in *Welton v. State of Missouri*, 91 U.S. 275 (1875), held it was invalid for a state to impose a license tax on peddlers selling goods not manufactured in Missouri, with no corresponding tax on goods manufactured in the State. *Id.* at 282. The U.S. Supreme Court also invalidated a $50 flat tax per truck used to provide laundry services in this State, when an instate competitor was only required to pay an $8 flat tax per truck. *Memphis Steam Laundry Cleaner v. Stone*, 342 U.S. 389 (1952).

More recently, the U.S. Supreme Court has refined what constitutes a discriminatory tax in *Oregon Waste Sys. v. Dep't of Envtl. Quality*, 511 U.S. 93 (1994).[2] In the opinion delivered by Justice Thomas, the Court stated discrimination "simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter. If a restriction on commerce is discriminatory, it is virtually *per se* invalid." *Id.* at 99, citing from *Chemical Waste Management, Inc. v. Hunt*, 504 U.S. 334 (1992) and *Philadelphia v. New Jersey*, 437 U.S. 617 (1978). Subsequent to the Court's *Oregon Waste* decision, the notion of a discriminatory tax being "*per se* invalid" was also used in *Fulton Corp. v. Faulkner*, 516 U.S. 325 (1996).

[2] Even before the *Oregon Waste* decision, the U.S. Supreme Court, in an opinion delivered by Justice Scalia, held an Ohio motor fuel tax credit for ethanol was invalid because it was discriminatory. *See New Energy Co. of Indiana v. Limbach*, 486 U.S. 269 (1988). Citing *Hughes v. Oklahoma*, 441 U.S. 322, 337 (1979), the Court noted "facial discrimination by itself may be a fatal defect and at a minimum … invokes the strictest scrutiny" (internal quotes omitted). *New Energy,* 486 U.S. at 279.

"There is no doubt that [North Carolina's] intangibles tax facially discriminates against interstate commerce. A regime that taxes stock only to the degree that its issuing corporation participates in interstate commerce favors domestic corporations over their foreign competitors in raising capital among North Carolina residents and tends, at least, to discourage domestic corporations from plying their trades in interstate commerce." *Id.* at 333.

Mississippi's law, specifically Miss. Code Ann. § 27-7-15(4)(i), facially discriminates against interstate commerce by providing preferable tax treatment solely to those dividends a Mississippi income taxpayer receives from its subsidiaries conducting operations in Mississippi. The same tax benefit is not provided to the dividends a Mississippi income taxpayer receives from subsidiaries not subject to Mississippi's income tax.[3] The U.S. Supreme Court's decision in *Wynne* is instructive. While the basis of that decision was primarily the lack of internal consistency in Maryland's taxing scheme on its residents under the fair apportionment prong of *Complete Auto* is discriminatory, the Court noted the "critical point is that the total tax burden on interstate commerce [was] higher." *Wynne,* 135 S. Ct.. at 1805. Thus, just as the Court in *Wynne* determined Maryland residents paid a higher tax on income earned from interstate commerce because the state allowed only a partial credit for income taxes paid by residents to other states—Mississippi taxpayers with dividends from out of state subsidiaries are paying a higher tax on income earned from interstate commerce because they are denied Mississippi's dividend received exclusion. When the parent corporation receives dividends from interstate commerce, the parent is subject to a greater tax burden than if it had only received dividends from subsidiaries doing business in Mississippi. The Department's focus on the dividends

[3] For example, if a parent corporation has $1,000 of Mississippi taxable income based on 10% of its income being apportioned to Mississippi and has $5,000 in dividends received from subsidiaries filing Mississippi income tax returns that year, the parent still only has $1,000 of Mississippi taxable income. In contrast, if all $5,000 in dividends it received were not from subsidiaries required to file income tax returns in Mississippi for the same tax year, the parent's Mississippi total taxable income would be $1,500 ($1,000 plus 10% of $5,000).

themselves reveals that Mississippi's tax treatment results in a higher effective tax rate on the interstate dividend amount than the intrastate dividend amount. For the same reasons that Maryland's tax scheme was struck down by the U.S. Supreme Court in *Wynne*, this Court should strike it down in this case.

II. Mississippi's dividend received exclusion statute is not compensatory in nature.

The U.S. Supreme Court has held a tax law that is facially unconstitutional, may, subject to strictest scrutiny, be allowed to stand if the tax "[advances] a legitimate local purpose that cannot be served by reasonable nondiscriminatory alternatives." *Oregon Waste*, 511 U.S. at 101. By contrast, nondiscriminatory regulations that have only incidental effects on interstate commerce are valid unless "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Id.* (citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)). Because Mississippi's discriminatory tax on dividends received from non-Mississippi taxpayers is not a regulation that only has incidental effects on interstate commerce, it is subject to the strictest scrutiny standard of *Oregon Waste* and not the lesser standard of *Bruce Church*.

In the event of a discriminatory tax scheme, a facially discriminatory tax may still survive Commerce Clause scrutiny if it is a truly "compensatory tax." *Fulton Corp.*, 516 U.S. at 331. Under that doctrine, a state's facially discriminatory tax on interstate commerce that imposes the rough equivalent of an identifiable and 'substantially similar' tax on intrastate commerce does not offend the Dormant Commerce Clause. *Oregon Waste,* 511 U.S. at 102. In order to establish a discriminatory tax on interstate commerce qualifies as a "compensatory tax," the burden shifts to the taxing state to show the tax was designed simply to make interstate commerce bear a burden already borne by intrastate commerce. *Fulton,* 516 U.S. at 334. The burden of proof shifts to the state to satisfy each of the following three conditions: (1) the state must, as a threshold matter, identify the intrastate tax burden for which the state is attempting to

compensate; (2) the tax on interstate commerce must be shown to roughly approximate, but not exceed, the amount of tax on intrastate commerce; and (3) the events on which the interstate and intrastate taxes are imposed must be substantially equivalent, that is they must be sufficiently similar in substance to serve as mutually exclusive proxies for each other. *Oregon Waste*, 511 U.S. at 102. A classic example of a discriminatory tax that is a compensatory tax is the states' use tax, complementing their sales tax imposed on instate vendors.[4] However, in this case, the dividend received exclusion for only dividends received from subsidiaries required to file returns in Mississippi fails all three conditions and does not qualify as a compensatory tax.

First, the Department of Revenue has not identified an intrastate tax burden which the state is attempting to compensate. Mississippi is a separate filing state and only subjects those businesses that earn income in Mississippi, and have sufficient nexus with the State, to Mississippi's corporate income tax. For such a business, any dividends received from a subsidiary that is required to file a Mississippi tax return are excluded from taxation. However, any dividends received from a subsidiary that is not required to file a Mississippi tax return are not excluded from the recipient's (AT&T in this case) taxable income. There is nothing in this fact pattern that identifies Mississippi-based taxpayers (*i.e.,* intrastate commerce) shouldering additional tax burdens. Quite the contrary, this merely highlights Mississippi's discriminatory tax burden on interstate commerce.

Second, the tax AT&T is subject to on its dividends received from subsidiaries not subject to Mississippi's income tax is not close to a rough approximate of the burden the State imposes on intrastate commerce. The best way to demonstrate this is by examining how income is apportioned to Mississippi. For income apportioned to Mississippi by one of AT&T's

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[4] Even with use taxes, the U.S. Supreme Court has made it clear the use tax cannot be greater than the sales tax imposed at the location where a product is used. *See Associated Industries of Missouri v. Lohman*, 511 U.S. 641 (1994).

subsidiaries, each subsidiary uses its own apportionment formula. That apportionment result could be greater or lower than AT&T's. In contrast, AT&T subsidiaries dividends (not income) will be apportioned to Mississippi without taking into consideration those subsidiaries' apportionment factors in the State. Thus, for a subsidiary not required to file income tax returns in Mississippi, the apportionment factors will be those of AT&T's; the apportionment factors will not reflect those subsidiaries' actual apportionment factors which would likely be much lower, if not zero, in most situations.[5] This example further highlights the discriminatory nature of Mississippi only taxing dividends received from non-Mississippi taxpayers.

Lastly, the events are not substantially equivalent. A subsidiary, with some restrictions, can retain earnings without paying out a dividend to its owners. Mississippi imposes an annual income tax based on the income earned in a given year. In contrast, when the State denies AT&T a dividend received exclusion because the subsidiary is not doing business in Mississippi, that dividend payment Mississippi is attempting to tax does not have any direct relation to the income earned by its subsidiaries in that tax year. The subsidiaries could have had a loss that year, but may still be able to make a dividend by using retained earnings.

Based on this tax failing to qualify as a compensatory tax, this Court must strike down the unconstitutional restriction on a parent being precluded from excluding the dividends it receives from subsidiaries not required to file Mississippi tax returns.

III. The U.S. Supreme Court's decision in *Kraft* refutes the Department of Revenue's "tax symmetry" Argument.

The U.S. Supreme Court addressed an issue similar to the one in this case in *Kraft General Foods, Inc. v. Iowa Dept. of Revenue and Finance,* 505 U.S. 71 (1992). The Court held that Iowa's law that allowed corporations to take a deduction for dividends received from

[5] These subsidiaries likely have no payroll or property factor to apportion to Mississippi and their sales factor is also likely to be negligible.

domestic subsidiaries, but did not allow corporations to take a deduction for dividends received from non-U.S. subsidiaries, was both discriminatory and unconstitutional. *Id*. Similar to Mississippi, Iowa was a separate return filing state and Iowa was attempting to treat dividend income received by a taxpayer differently based solely on the where the subsidiary paying the dividends was doing business. As with the chancery court in this case, the U.S. Supreme Court in *Kraft* rejected a number of arguments made by the state that there could be some justification for this facial discrimination that could overcome the Commerce Clause violation.

To be sure, there are differences between *Kraft* and the instant case. *Kraft* was a foreign commerce case, not an interstate commerce case.[6] In *Kraft*, the two classifications found to be facially discriminatory were domestic (U.S. entities) and foreign (non-U.S. entities), not, as in this case, nexus subsidiaries (that filed returns in Mississippi) and non-nexus subsidiaries (that did not file returns in Mississippi). Nonetheless, the similarities in the underlying fact patterns and legal analysis are striking. As the Court found in *Kraft*, the differential treatment of dividends received by a taxpayer based solely on where the issuing subsidiary was doing business violated the Commerce Clause. The chancery court properly relied upon *Oregon Waste* and *Fulton* to reach its conclusion that: "The stipulated evidence in this matter demonstrates that this statutory scheme disallows a valuable tax exemption based solely upon an interstate element, which is whether the distributing corporation maintains property and/or employees in Mississippi or files a Mississippi income tax return. As such, this statute clearly favors domestic corporations over foreign competitors and discourages corporations from choosing to locate their operations outside of Mississippi." R.E. 15.

[6] The inquiry under the foreign commerce clause uses *Complete Auto's* four-prong test and also takes into account: (1) whether the tax, notwithstanding apportionment, creates a substantial risk of international multiple taxation and (2) whether the tax presents the federal government from speaking with one voice when regulating commercial relations with foreign governments. *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 451 (1979).

Another element of the *Kraft* decision is relevant here. The Department of Revenue in this case cites the New Hampshire Supreme Court decision in *General Electric Co., Inc. v. Commissioner, New Hampshire Department of Revenue Administration*, 914 A. 2d 246 (2006) ("GE case"), for the dubious principle of "taxing symmetry." Under the Department's theory, an otherwise discriminatory tax applied only to dividends issued by a foreign subsidiary is justified because the earnings of the foreign subsidiary were never taxed in the state as compared with the earnings of a domestic subsidiary that files in the state. Thus, the Department argues the State is entitled to tax a subsidiary's income once, either when it: (1) files an income tax return in the state (as in the case of a nexus subsidiary) or (2) pays a dividend to a parent in the state (in the case of a non-nexus subsidiary). Appellant Br., p. 21. However, the U.S. Supreme Court rejected the theory of tax symmetry.[7]

IV. The Mississippi Department of Revenue has advanced no other legitimate reason to justify this discriminatory treatment.

Mississippi Code Annotated § 27-7-15(4)(i) explicitly favors intrastate commerce over interstate commerce by imposing a tax burden on interstate businesses subject to Mississippi's income tax. It does this by denying Mississippi income taxpayers an exclusion for dividends received from non-Mississippi income taxpayers. In light of this facial discrimination, Mississippi must have a legitimate reason for the tax scheme that cannot be accomplished by a nondiscriminatory alternative. *Oregon Waste*, 511 U.S. at 100-101. As previously explained, this analysis requires the "strictest scrutiny," and the burden of proving the legitimacy of the tax treatment is on the State. *Id*.

[7] The relevant Iowa position rejected by the U.S. Supreme Court in *Kraft* was: "To the extent corporations do business in Iowa, an apportioned share of their entire corporate income is subject to Iowa tax. In the case of a foreign subsidiary doing business abroad, Iowa would tax the dividends paid to the domestic parent, but would not tax the subsidiary's earnings." *Kraft*, 505 U.S. at 79.

Here, Mississippi advances no argument that its treatment in this case was intended to resolve a legitimate concern or that the State's concerns cannot be resolved in a nondiscriminatory manner. Instead, the Department claims the dividends at issue were only included in the AT&T's Mississippi taxable income because those dividends had not "already borne a tax[.]" Appellant Br., p. 19. The Department apparently reasons that because the dividends were only subject to tax once in Mississippi, the State's preferential dividend received exclusion does not discriminate.

The Department's approach is flawed; if a corporation receives a dividend from a domestic payor, that corporation will not pay tax on the dividend. However, if that corporation receives the dividend from a non-Mississippi income taxpayer, the corporation would be required to pay tax on the same dividend. Hence, a corporation receiving dividend payments from non-Mississippi subsidiaries will always have a higher Mississippi tax burden than a corporation receiving dividend payments from dividend payors subject to Mississippi's income tax. The fact that a dividend payor does not pay Mississippi tax should be inconsequential with respect to a Mississippi income tax filer that receives the dividend.

The Department emphasizes AT&T "is not a local business but is a unitary multistate enterprise[,]" Appellant Br., p. 20, and this Court should therefore not view AT&T as a separate entity from the dividend payors when including the dividends in AT&T's income. The Department's rationale is to conflate the payor and payee, for purposes of determining whether the State's treatment of the dividends is discriminatory, into one taxpaying entity. However, unlike some other states, Mississippi has unequivocally rejected this unitary combined reporting approach for purposes of imposing its income tax on corporations. Indeed, as recently as 2014,

the Mississippi State Legislature reaffirmed Mississippi was still a "separate reporting" state.[8] This runs counter to the Department of Revenue arguing Mississippi's denial of a dividend received exclusion for dividends received from non-Mississippi income taxpayers was an authorized method prescribed by the Legislature to tax members of a unitary business group as a single taxpayer (backdoor unitary combined reporting).

If a dividend payor has nexus with Mississippi, Mississippi taxes the dividends earned by that taxpayer on a separate company basis. Hence, those dividends are viewed in light of the entire net income (or loss) of that distinct entity. However, where, as here, that payor does not have nexus with Mississippi, the Department attempts to tax indirectly what it cannot tax directly. While there are ostensibly ways to tax this income in a nondiscriminatory manner, the Mississippi Legislature has made a policy decision to adhere to a separate reporting paradigm.[9] Mississippi has instead chosen to treat all taxpayer income separately except for those circumstances where a dividend payor engages in interstate commerce and lacks substantial nexus with the State. The Department neither supplies a legitimate basis for this discriminatory treatment nor explains why it cannot attain its goal of taxing all income earned in the State once without facially discriminating against interstate commerce.

In short, the Department of Revenue must supply a legitimate reason for Mississippi's tax structure in light of the State's facial discrimination of dividends received from non-Mississippi income taxpayers. Mississippi's only stated justification for the discriminatory treatment is that the dividend receipts have not already borne Mississippi's income tax. However, Mississippi's

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[8] *See* H.B. 799, 2014 Reg. Session (Miss. 2014).

[9] Indeed, there are a number of significant reasons why a state may prefer to employ a separate reporting structure of its income tax. For instance, combined reporting has the effect of arbitrarily assigning income of a variety of related businesses to different states, effectively ignoring the reality that most businesses are more profitable under certain business segments and certain geographies than others. Moreover, combined reporting has proven to have uncertain effects on state revenues, in some instances decreasing state revenue. These significant concerns, along with the administrative burdens in determining what constitutes the unitary group and calculating the combined income of a unitary group, have led to a number of states retaining separate reporting.

law fails because it does not attempt to tax the dividend based on where the underlying income to pay the dividend was earned. Instead of looking at the payor's activity in Mississippi, it inappropriately reverses course with dividend payments received from non-Mississippi based taxpayers and only looks at the payee's activity in Mississippi. Hence, the Department's stated objective is not even achieved; dividend receipts are potentially taxed twice when earned by two entities engaged in interstate commerce. Consequently, Miss. Code Ann. §27-7-15(4)(i) should be held unconstitutional.

V. Mississippi's dividend received exclusion statute results in Mississippi's taxation of income earned outside its borders.

The disparate treatment of intrastate and interstate dividends results in taxation of income earned outside Mississippi's borders. The Commerce Clause of the United States Constitution prohibits a state from taxing value earned outside its borders. *Allied-Signal, Inc. v. Dir., Div. of Taxation*, 504 U.S 768, 773 (1992). A state's power to tax activities must be "justified by the 'protection, opportunities and benefits' the State confers on those activities." *Id.* at 778 (quoting *Wisconsin v. J.C. Penney Co.*, 311 U.S. 435, 444 (1940)). Furthermore, in *Complete Auto*, the U.S. Supreme Court held that pursuant to the Commerce Clause of the U.S. Constitution, a state income tax is invalid unless it is fairly related to benefits provided by the state, the fourth prong of the *Complete Auto* test. The fourth prong of the *Complete Auto* test also supports the taxpayer's position in this case. The test for the fourth prong is not whether the taxpayers have received any direct benefits from the state, but "whether the state has given anything for which it can ask return." *Commonwealth Edison,* 453 U.S. at 625 (citing *Wisconsin v. J.C. Penney Co.*, 311 U.S. 435, 444, 61 S.Ct. 246, 249, 85 L.Ed. 267 (1940)). "[T]he test is closely connected to the first prong of the *Complete Auto Transit* test. Under this threshold test, the interstate business must have a substantial nexus with the State before *any* tax may be levied on it." *Id.* at

626 (emphasis in original). To this point, a taxpayer can be expected to contribute to a state for benefits “derived from his enjoyment of the privileges of living in an organized society.” *Id.* at 623. Such privileges include “police and fire protection, the use of public roads and mass transit, and the other advantages of civilized society.” *Goldberg v. Sweet,* 488 U.S. 252, 267 (1989).

Here, the dividend payors have no connection with Mississippi and are not directly subject to tax in the State. The dividends from these payors represent income earned outside Mississippi. In an attempt to reach those receipts earned outside the State, Mississippi is clearly attempting to make an end run around its separate filing return system by increasing the amount of tax imposed on the in-state parent. In this situation, the non-nexus subsidiary has no presence in Mississippi and receives no services from the State. If Mississippi attempted to directly impose tax on such an entity, it would clearly violate this prong under *Complete Auto.* While AT&T may receive some benefit from the State that is fairly related to the tax being paid, it is difficult to see how the additional dividends AT&T received from subsidiaries not doing business in the State are fairly related to the services Mississippi provides to those subsidiaries lacking substantial nexus with the State. Indeed, AT&T’s activities in Mississippi do not change depending on the location of the dividend payor. As such, increasing AT&T’s taxable income in Mississippi based on it receiving dividends from non-Mississippi income taxpayers results in Mississippi imposing a tax that is unrelated to the benefits conferred by Mississippi to AT&T. Because the benefits being received by AT&T are not fairly related to the tax being paid on those dividends, the fourth-prong of the *Complete Auto* test is also not satisfied.

CONCLUSION

Amicus respectfully requests this Court to affirm the decision of the chancery court, which held Miss. Code Ann. § 27-7-15(4)(i) unconstitutionally favored domestic corporations over foreign competitors.

Respectfully submitted this the 17th day of December, 2015.

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By and through its attorney,

/s/ Louis G. Fuller

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CERTIFICATE OF SERVICE

I, Louis G. Fuller, attorney for Council on State Taxation, do hereby certify that I electronically filed the *Amicus Curiae Brief of Council on State Taxation in Support of Brief of Appellee AT&T Corp.* with the Clerk of the Court using the MEC system, which sent notification to all registered users including the following:

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I further certify that I have this day forwarded by United States mail, postage prepaid, a true and correct copy of the foregoing to the following:

Honorable William Singletary
Hinds County Chancery Judge
P.O. Box 686
Jackson, MS 39205-0686

This, the 17th day of December, 2015.

s/ Louis G. Fuller
LOUIS G. FULLER