



The Federal Tax Injunction Act Is a Bar to Fair Litigation in State Tax Controversies

Position: *The federal Tax Injunction Act uniquely and unjustly bars most state tax litigation from the lower federal courts. The Tax Injunction Act should be amended to provide broader access to federal courts in state tax cases.*

Explanation:

The Federal Tax Injunction Act (TIA)¹ was enacted in 1937 to prohibit lower federal courts (federal District and Appeals Courts) from hearing state tax cases brought by taxpayers. Taxpayers must file state tax claims in state courts “as long as a plain, speedy and efficient remedy may be had in state court.”² State tax cases, even those involving challenges arising from federal statutes or federal constitutional provisions, can only obtain a federal court hearing if the U.S. Supreme Court grants certiorari, which is rare.

When the TIA was initially enacted, taxpayers were still guaranteed a mandatory right of review at the U.S. Supreme Court. As the Report of the U.S. House Committee on the Judiciary indicated at that time: “...in the event of an adverse decision of the State court, an appeal lies to the United States Supreme Court so that the contestant may ultimately have his constitutional rights determined by the highest Federal court, even though he may not have access in the first instance to the United States district courts...”³

However, in 1988, faced with a high volume of cases at the U.S. Supreme Court, Congress enacted legislation eliminating mandatory Supreme Court review of state court decisions involving questions of federal law.⁴ Thus, since 1988, petitions for writ of certiorari in state tax cases are subject to *discretionary* U.S. Supreme Court review, with a current rejection rate of about 98% for petitions in all cases. The sharp curtailment of access to federal courts is unique to state taxes. Other non-tax categories (*e.g.*, environmental, labor, consumer) face no similar bar to access the federal court system. This judicial forum limitation disadvantages taxpayers, particularly multistate businesses that are more likely to raise important federal law and constitutional issues because they are engaged in interstate commerce. These taxpayers can bring tax cases only in state courts where the state judiciary may be more inclined to side with the state when significant tax revenues are in dispute.

Over the last thirty years, the level and complexity of interstate and global commerce have significantly expanded, as has the jurisdictional reach of state and local governments over out-of-state businesses.⁵ These factors increase the potential implications of unfair and discriminatory state taxation. The best way to level the playing field is to enact federal legislation that amends the TIA and provides broader access to lower federal courts in state tax cases initiated by taxpayers.

¹ Section 1341 of Title 28.

² *Id.*, quoting the first paragraph of section 24.

³ House Report No. 1503 (to accompany S. 1551) (1937), at 3.

⁴ P.L. 100-352. (Codified at 28 U.S.C. §§ 1254.)

⁵ See *South Dakota v. Wayfair, Inc.*, 585 U.S. 138 (2018).