Direct Marketing Ass'n v. Brohl, No. 13-1032

The Tax Injunction Act provides that "[t]he 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." 28 U.S.C. § 1341. Today, in Direct Marketing Ass'n v. Brohl, No. 13-1032, the Supreme Court held that the Tax Injunction Act does not bar federal courts from exercising jurisdiction over a suit to enjoin the informational notice and reporting requirements of a state law that neither imposes a tax nor requires collection of a tax.

Petitioner Direct Marketing Association filed a federal action seeking to invalidate as unconstitutional a Colorado state law that imposes notice and reporting requirements on out-of-state retailers. Most of these "non-collecting" retailers sell their products by mail or online and, unlike in-state sellers, are not themselves required to collect and pay Colorado's sales and use tax; tax on those items is due from, but rarely paid by, in-state purchasers. To facilitate the collection of tax directly from purchasers, the Colorado statute requires non-collecting retailers to (1) notify purchasers that they are obligated to pay tax owed, (2) provide customers who purchased more than $500 in goods in a single calendar year with a list of their purchases, and (3) report to the Colorado Department of Revenue the names, addresses, and total purchases of their Colorado purchasers. Retailers that fail to comply with these notice and reporting requirements are subject to penalties. The district court entered a permanent injunction barring enforcement of the Colorado law, concluding that it discriminated against and unduly burdened interstate commerce. On appeal, the Tenth Circuit did not reach the merits, but instead held that the district court's order had the effect of "restrain[ing]" the collection of Colorado's tax and that the Tax Injunction Act therefore divested the district court of jurisdiction.

In a unanimous opinion by Justice Thomas, the Court reversed, relying on the unambiguous meaning of the statutory language. The Court held that Colorado's notice and reporting requirements did not constitute an "assessment," "levy," or "collection" of state taxes, but rather are events that precede the assessment, levy, or collection of taxes. In interpreting "assessment," "levy," and "collection," the Court looked to their meaning under the analogous Anti-Injunction Act, which applies to federal taxation, and to their broader usage in the federal Tax Code. The Court also held that Petitioner's suit would not "restrain" the assessment, levy, or collection of Colorado's taxes. The Court recognized that the word "restrain" can have several meanings but ruled that it had a narrow meaning as used in context in the Tax Injunction Act. The Court expressed no opinion on whether Petitioner's suit might nonetheless be barred under "the 'comity doctrine'" or whether the district court correctly held that Colorado's notice and reporting requirements discriminated against and unduly burdened interstate commerce.

Justice Kennedy issued a concurring opinion expressing his willingness to reconsider National Bellas Hess, Inc. v. Department of Revenue of Illinois, 386 U.S. 753 (1967), and Quill Corp. v. North Dakota, 504 U.S. 298 (1992), which prohibit States from collecting use taxes from businesses that do not have an in-state physical presence. Justice Kennedy opined that "dramatic technological and social changes" have taken place "in our increasingly interconnected economy" and that National Bellas and Quill create "a startling revenue shortfall in many States, with concomitant unfairness to local retailers and their customers who do pay taxes at the register."

Justice Ginsburg also issued a concurring opinion, joined by Justice Breyer and joined in part by Justice Sotomayor, which observed that Petitioner's suit did not implicate the Congressional objectives behind the Tax Injunction Act, because Petitioner did not challenge its own or anyone else's tax liability or collection responsibilities, and that the Court's opinion is consistent with Hibbs v. Winn, 542 U.S. 88 (2004), which held that the Tax Injunction Act did not bar a plaintiffs' suit that sought to enjoin certain state tax credits.

This case is important to online retailers and other sellers that do not collect state tax but may be subject to notice-and-reporting requirements like those imposed by Colorado. Justice Kennedy's call to reconsider National Bellas Hess and Quill—and his apparent willingness to change his position and to vote to overrule those decisions—may, if it signals a broader readiness on the part of the Court to reconsider those decisions, have dramatic implications for online retailers that do not collect state taxes and for brick-and-mortar retailers that must.

Any questions about the case should be directed to Charles A. Rothfeld (+1 202 263 3233) in our Washington office.