MICHIGAN SUPREME COURT

Gillette Commercial Operations North America & Subsidiaries v. Department of Treasury

499 Mich. 960 (Mich. 2016) · No. SC: 152598-152610; COA: 325505-326136; Court of Claims: 11-000035-MT to 14-000300-MT · Decided June 24, 2016

SUMMARY

The Michigan Supreme Court denied consolidated applications for leave to appeal concerning the retroactive repeal of Michigan's participation in the Multistate Tax Compact by 2014 PA 282. Justice Markman dissented, arguing that the applications presented significant questions involving federal and state due process, impairment of contracts, and separation of powers; Justice Viviano joined the dissent. The underlying dispute concerned whether the retroactive repeal could eliminate multistate taxpayers' election to use the Compact's three-factor apportionment formula.

CASE DETAILS

COURT	Michigan Supreme Court
WRITING FOR THE COURT	Stephen J. Markman; Robert P. Young, Jr.; Brian K. Zahra; Bridget M. McCormack; David F. Viviano; Richard H. Bernstein; Joan L. Larsen
JURISDICTION	Michigan
DECIDED	June 24, 2016
DOCKET	SC: 152598-152610; COA: 325505-326136; Court of Claims: 11-000035-MT to 14-000300-MT
DISPOSITION	other
PROCEDURAL POSTURE	The Michigan Supreme Court denied consolidated applications for leave to appeal from the Michigan Court of Appeals judgment upholding the constitutionality of 2014 PA 282. Justice Markman dissented and would have granted leave.
STANDARD OF REVIEW	Discretionary review of applications for leave to appeal
PRECEDENTIAL VALUE	The majority order denying leave to appeal is precedential only as to the disposition and does not resolve the constitutional merits. The dissent is nonprecedential.
PARTIES	Sonoco Products Company, Anheuser-Busch, Inc., Ingram Micro, Inc., Renaissance Learning, Inc., AK Steel Holding Corporation,

Advance/Newhouse Partnership, Big Lots Stores, Inc., Kimball International Marketing, Inc., Nintendo of America, Inc., Fluor Corporation and Subsidiaries, T-Mobile USA, Inc. and Subsidiaries v. Department of Treasury

TOPICS

state and local tax | tax | tax court procedure | appellate procedure | due process

PRACTICE AREAS

state taxation | constitutional law | appellate procedure

QUESTIONS PRESENTED

1. Whether 2014 PA 282's retroactive repeal of the Multistate Tax Compact and its election provision violated federal due process.
2. Whether 2014 PA 282 violated the Michigan Due Process Clause.
3. Whether retroactive withdrawal from the Multistate Tax Compact impaired contractual obligations in violation of the federal and Michigan Contracts Clauses.
4. Whether 2014 PA 282 violated separation of powers by prescribing outcomes in cases pending after IBM v. Department of Treasury.

HOLDINGS

1. The Michigan Supreme Court denied the applications for leave to appeal because it was not persuaded that the questions presented should be reviewed by the Court.

KEY QUOTATIONS

> *"First, is 2014 PA 282 consistent with federal due-process protections, US Const, Ams V and XIV, given that the retroactivity period here of six years and nine months arguably exceeds "a modest period of retroactivity," United States v Carlton, 512 U.S. 26, 32 (1994)"* (at 5)

> *"As the United States Supreme Court has recognized, "[T]he power to tax involves the power to destroy[.]""* (at 6)

> *"Accordingly, I respectfully dissent and would grant leave to appeal."* (at 6)

FACTUAL BACKGROUND

Michigan joined the Multistate Tax Compact in 1970, and the Compact allowed qualifying multistate taxpayers to elect a three-factor apportionment formula. After the Michigan Business Tax Act adopted a sales-factor-only formula, the Michigan Supreme Court held in IBM v. Department of Treasury that the Compact election remained available for 2008 taxes. The Legislature then enacted 2014 PA 282, retroactively repealing the Compact and its election provision beginning January 1, 2008, prompting constitutional challenges by multiple multistate taxpayers.

PROCEDURAL HISTORY

The taxpayers challenged 2014 PA 282, which retroactively repealed Michigan's participation in the Multistate Tax Compact and its election provision effective January 1, 2008. The Court of Claims and Michigan Court of Appeals upheld the statute against constitutional challenges. The Michigan Supreme Court denied leave to appeal.

DISPOSITION

other

CASES CITED

- IBM v. Department of Treasury, 496 Mich. 642 (2014)
- Gillette Commercial Operations North America & Subsidiaries v. Department of Treasury, 312 Mich. App. 394, 401 (2015)
- United States v. Carlton, 512 U.S. 26, 32 (1994)
- Delta Charter Township v. Dinolfo, 419 Mich. 253, 276 n. 7 (1984)
- People v. Victor, 287 Mich. 506, 514 (1939)
- Gillette Co. v. Franchise Tax Board, 62 Cal. 4th 468, 477-479 (2015)
- People ex rel. Sutherland v. Governor, 29 Mich. 320, 325-326 (1874)
- Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 217-218 (1995)
- McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 431 (1819)