

30th ANNUAL

PAUL J. HARTMAN
STATE AND LOCAL TAX FORUM

Thirty Years of Supreme Court Decisions

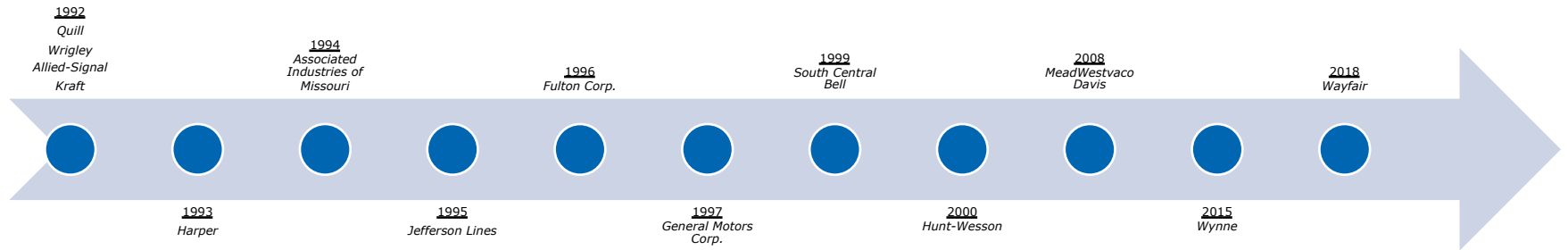
October 25, 2023

Jeff Friedman, Partner, Eversheds Sutherland LLP, (US)

Marilyn Wethekam, COST

Joe Huddleston, Managing Director Tax, Services, Ernest Young

Timeline



1992

Quill Corp. v. North Dakota, 504 U.S. 298 (1992)

- The Court drew a distinction between nexus for Due Process Clause purposes and nexus for Commerce Clause purposes.
- The Court held that the Commerce Clause limited a state's power to impose the sales and use tax collection obligations on out-of-state sellers to those with a physical presence in the state.

1992

Wisconsin Dep't of Revenue v. Wrigley, 505 U.S. 214 (1992)

- The Court determined that some of the tasks performed fell within the definition of a “solicitation” or “ancillary to solicitation” and others were unprotected activities.
- **Solicitation**: verbal requests for orders or any speech or conduct that implicitly invites an order.
- **Ancillary to solicitation**: providing a car and stock of free samples, recruitment/training/evaluation of sales representatives and the use of hotels and homes for sales-related meetings, and the communication with the Chicago office about credit disputes.
- **Unprotected activities**: sales representatives repairing or servicing the company’s products, replacement of stale gum, supplying of gum through agency stock checks, and the storage of gum.

1992

Allied-Signal, Inc. v. Dir., Div. of Taxation, 504 U.S. 768 (1992)

- The Court refused to substitute “common ownership” for the unitary business principle as the linchpin or apportionability and determined New Jersey could not include the gain on a sale of stock in the taxpayer’s apportionable tax base.

1992

Kraft Gen. Foods v. Iowa Dep't of Revenue & Fin., 505 U.S. 71 (1992)

- The Court held that Iowa's corporate income tax unconstitutionally discriminated against foreign commerce because it included dividends from foreign subsidiaries, but not from domestic subsidiaries in a taxpayer's apportionable tax base.

1993

Harper v. Va. Dep't of Taxation, 509 U.S. 86 (1993)

- The Court held that its decision in *Davis v. Michigan Department of Treasury* (that Michigan violated principles of intergovernmental tax immunity by taxing the retirement benefits paid by the federal government while exempting retirement benefits paid by state and local governments) applied retroactively.

1994

Associated Indus. V. Lohman, 511 U.S. 641 (1994)

- The Court struck down, as unconstitutionally discriminatory, a statewide use tax designed to complement a local sales tax insofar as the rate of the use tax exceeded the rate of the local sales tax.

1995

Okla. Tax Comm'n v. Jefferson Lines, 514 U.S. 175 (1995)

- The Court sustained a State's ability to impose a tax on the unapportioned gross receipts from the sale of a bus ticket for interstate transportation.

1996

Fulton Corp. v. Faulkner, 516 U.S. 325 (1996)

- The Court struck down a North Carolina intangible property tax, as applied to corporate stock, on the grounds that the tax discriminated against interstate commerce because it varied inversely with the North Carolina presence of the taxpayer whose stock was subject to the tax.

1997

General Motors Corp. v. Tracy, 519 U.S. 278 (1997)

- The Court held that a taxing scheme that exempted sales of natural gas from a local public utility while taxing sales of natural gas from an interstate gas marketer did not violate the Commerce Clause.

1999

S. Cent. Bell Tel. Co. v. Alabama, 526 U.S. 160 (1999)

- The Court held that Alabama's franchise tax, which was measured by the par value of domestic corporations' capital stock but by the actual capital that foreign corporations employed in the state, was facially discriminatory because it allowed domestic corporations to have the ability to reduce their franchise tax liability simply by reducing the par value of their stock while denying foreign corporations that same ability.

2000

Hunt-Wesson, Inc. v. Franchise Tax Bd., 528 U.S. 458 (2000)

- The Court held that California's interest-offset provision violated the Due Process and Commerce Clauses by taxing a nondomiciliary taxpayer's nonunitary dividends that are outside of California's jurisdictional reach.

2008

MeadWestvaco Corp. v. Ill. Dep't of Revenue, 553 U.S. 16 (2008)

- The Court held that the “operational/investment function” test is not a separate test from the unitary business principle. The issue is whether the asset generating the income is part of the taxpayer’s unitary business.

2008

Kentucky Dep't of Revenue v. Davis, 553 U.S. 328 (2008)

- The Court sustained Kentucky's differential treatment of in-state and out-of-state municipal bond income on the narrow grounds of a state's right to favor itself against all competitors (private or public) in pursuit of traditional governmental functions.

2015

Comptroller of the Treasury v. Wynne, 575 U.S. 542 (2015)

- The Court held that the application of Maryland's piggyback "County Tax" to all of the income of an S-Corporation owned by married Maryland residents without allowing a credit for taxes paid to other states violated the Commerce Clause.

2018

South Dakota v. Wayfair, 138 S. Ct. 2080 (2018)

- The Court held that *Quill* was “unsound and incorrect” and that economic or virtual presence is sufficient to find nexus.

