ABA Tax Section 2019 Midyear Tax Meeting

New Orleans, LA

January 17-19, 2019
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The Professional and Amateur Sports Protection Act (PASPA), makes it unlawful for:

- States and its subdivisions to sponsor, operate, advertise, promote, license, or authorize by law or compact betting, gambling, wagering, etc. on competitive sports (collectively, “sports betting”), and
- For a person to sponsor, operate, advertise, or promote such activities pursuant to a government law or compact

Grandfather provisions allows sports betting in four states

PASPA allows the Attorney General and professional and amateur sports organizations to bring civil actions enjoining the sports betting activity
The 10th Amendment:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”
Federal law and doctrines: Anticommandeering Principle

- Congress does not have the power to issue direct orders to governments of the States.

- Anticommandeering doctrine represents the recognition of this limit on congressional authority.

- This doctrine did not begin to emerge in case law until the 1990s.
Federal law and doctrines: Anticommandeering Principle

  ► Court ruled that a federal law requiring a State in certain instances to either take title to lower-level radioactive waste or to regulate in accordance with federal standards was unconstitutional.
  ► Court held that “the Constitution does not empower Congress to subject state governments to this type of instruction.”
  ► Congress has the power to regulate individuals, not States.
  ► Congress has the authority to pass laws requiring or prohibiting certain acts, but does not have the authority to directly compel States to require or prohibit those acts.
Federal law and doctrines: Anticommandeering Principle


► Court ruled a federal statute that required state and local law enforcement officers to perform background checks and related tasks in connection with the application for a handgun license was unconstitutional

► Court held that the federal government may not “command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.”

► This applies to state officers as well as “those assigned more mundane tasks.”
The Court in *Murphy v. NCAA* explains why adhering to the anticommandeering principle is important:

- It serves as “One of the Constitution’s structural protections of liberty” (citing *Printz*).
- “the Constitution divides authority between federal and state governments for the protection of individuals” (citing *New York*).
- “’[A] healthy balance of power between the States and the Federal Government [reduces] the risk of tyranny and abuse from either front.’” (citing *New York*).

- It promotes political accountability (e.g., clear “who” to credit or blame for the effect of the regulation).
- It prevents Congress from shifting the costs of regulation to the States.
Murphy v. NCAA: The case in brief

Murphy v. NCAA, No. 16-476 (U.S. S. Ct. May 14, 2018)

- In 2014 New Jersey enacted legislation repealing old statutory provisions prohibiting sports betting on sporting events meeting certain criteria.
- NCAA and three professional sports leagues brought suit to enjoin the law in violation of the PASPA.
- New Jersey argued that PASPA violates the U.S. Constitution’s anticommandeering principle.
- Lower courts found New Jersey’s law violated PASPA.
- U.S. Supreme Court reversed, held that the PASPA provision prohibiting state authorized sports betting violates the anticommandeering rule.

Justice Alito wrote the opinion in which C.J. Roberts, and J.J. Kennedy, Thomas, Kagan and Gorsuch joined.
Murphy v. NCAA: Court’s ruling on the PASPA

- Court agreed with New Jersey’s that when a State completely or partially repeals old laws banning sports betting, it authorizes such activity
  - At the time PASPA was enacted most states prohibited sports betting
  - “Commonly speak of state authorization only if the activity in question would otherwise be restricted.”
Murphy v. NCAA: Court’s ruling on the PASPA

- PASPA anti-authorization provisions “unequivocally dictates what a state legislature may and may not do.”
- Basic principle that Congress cannot issue direct orders to state legislatures applies to both compelling a State to enact legislation and prohibiting a State from enacting new law
- U.S. Supreme Court precedent does not show that PASPA’s anti-authorization provision is constitutional
- Anticommandeering doctrine does not apply when Congress evenly regulates activity in which both States and private actors engage
Murphy v. NCAA: Court’s ruling on the PASPA

- PASPA’s anti-authorization provision does not constitute a valid preemption provisions because:
  - It does not represent the exercise of a power conferred on Congress by the Constitution
  - It cannot be read as a regulation of private actors as “[i]t does not confer any federal rights on private actors interested in conducting sports gambling operations or impose any federal restrictions on private actors.”
Murphy v. NCAA: Court’s ruling on the PASPA

For the same reasons mentioned above, PASPA prohibition on licensing sports betting violates the anticommandeering rule

Court said it did not need to rule on whether New Jersey’s 2014 law violates PASPA’s anti-licensing provision

The remaining provision of the PASPA are not severable from the provisions at issue in this case
The Court’s parting words…

“Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own.”
Applying *Murphy v. NCAA* to other federal laws limiting states ability to impose tax
State may not impose a net income tax on an out-of-state corporation if its only in-state activity is:

- Solicitation of orders
- By an employee or representative
- For sales of tangible personal property
- Orders are sent outside state for approval, and
- Filled by shipment from point outside state
Internet Tax Freedom Act (ITFA)

- ITFA bars federal, state and local governments from taxing Internet access and from imposing “multiple and discriminatory taxes on electronic commerce” but provides an exception for those states that imposed a tax on internet access prior to October 1, 1998.
- Moratorium extended multiple times until it was made permanent by the Trade Facilitation and Trade Enforcement Act of 2015 (HR 644 signed February 24, 2016).
- The Trade Facilitation and Trade Enforcement Act of 2015 also placed a four-year sunset on the ITFA “grandfathering” provisions.
- Starting July 1, 2020, the prohibition will apply and those states that were imposing taxes on internet access services will no longer be allowed to do so.
- The grandfathered states are: Hawaii, New Mexico, North Dakota, Ohio, South Dakota, Texas and Wisconsin.
Mobile Telecommunications Sourcing Act (P.L. 106-252) (MTSA)

- The MTSA establishes uniform nationwide sourcing rules for state and local taxation of wireless services by establishing a “primary place of use” for determining the taxing jurisdiction.
- The MTSA applies to state and local sales taxes, utility taxes, industry-specific telecommunications taxes, 911 calls and the Universal Service Fund.
- Prior to enactment of the MTSA, state and local taxing jurisdictions applied different nexus standards for taxing mobile telecommunications services.
- While the MTSA will eliminate those differences, its requirements differ from those set forth in *Goldberg v. Sweet*, 488 U.S. 252 (1989) (State excise tax on interstate telecommunications originating or terminating in the state and charged to a state address did not violate the Commerce Clause).
- The MTSA’s sourcing provision assumes that mobile telecommunications are sourced to the subscribers’ residential or business address, regardless of where the call originates or terminates.
Limitation on State income taxation of certain pension income (P.L. 104-95)

► 4 U.S. Code § 114 - Limitation on State income taxation of certain pension income
   ► Prohibits states from imposing an income tax on any retirement income of a nonresident individual
   ► Retirement income includes income from the following:
     ► A qualified trust
     ► A simplified employee pension
     ► An annuity plan or annuity contract
     ► An individual retirement plan
     ► An eligible deferred compensation plan
     ► A governmental plan
     ► Certain trusts, or
     ► Plans, programs, or arrangements meeting certain criteria
Potential federal legislation that would impact States ability to impose tax

- Sales and use tax nexus and simplification bills (similar to Marketplace Fairness bill)
- Business Activity Tax Simplification Act (BASTA) (modernization of P.L. 86-272, uniform nexus standard for state taxes)
- Mobile workforce legislation (uniform state nonresident withholding)
- Digital goods and services tax fairness bills (sets out a framework for which one state can impose its sales tax on a digital good or service)
Questions?