



Serving the Iowa Legislature

IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

August 26, 2015

2015 Interim No. 3

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Iowa Legislative Interim Calendar and Briefing is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

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Tuesday, September 8, 2015

Administrative Rules Review Committee

9:00 a.m., Room 116, Statehouse

AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Administrative Rules Review Committee

Chairperson: Representative Dawn Pettengill

Vice-Chairperson: Senator Wally Horn

Location: Room 116, Statehouse

Date & Time: Tuesday, September 8, 2015, 9:00 a.m.

Contact Persons: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

Agenda: Published in the Iowa Administrative Bulletin:

<https://www.legis.iowa.gov/iowaLaw/AdminCode/bulletinSupplementListing.aspx>

Internet Page: <https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705>

LEGISLATIVE COUNCIL

August 10, 2015

Chairperson: Speaker Kraig Paulsen

Vice-Chairperson: Senator Michael E. Gronstal

Committees. The Legislative Council approved recommendations reported by the Service Committee and the Studies Committee, and received an annual report from the Fiscal Committee and the Tax Expenditure Committee. See briefings in this issue for the Service and Studies Committees. Additionally, the Council acknowledged the establishment of a Legislative Health Policy Oversight Committee in 2015 Acts, SF 505, §64.

LSA Contacts: Glen Dickinson, Legislative Services Agency, (515) 281-3566; Richard Johnson, Legal Services, (515) 281-3566; Susan Crowley, Legal Services, (515) 281-3430.

Internet Page: <https://www.legis.iowa.gov/committees/committee?groupID=703>

SERVICE COMMITTEE OF THE LEGISLATIVE COUNCIL

August 10, 2015

Chairperson: Senator Michael E. Gronstal

Vice-Chairperson: Speaker Kraig Paulsen

Overview. The committee received information and made recommendations concerning the nonpartisan Legislative Services Agency and Office of Ombudsman which were approved by the Legislative Council.

Personnel Reports and Budgets. The Legislative Services Agency and Office of Ombudsman personnel reports were received and any promotions were recommended for approval, along with a recommendation for approval of the agency budgets for FY 2015-2016.

LSA Contacts: Glen Dickinson, Legislative Services Agency, (515) 281-3566; Richard Johnson, Legal Services, (515) 281-3566; Ed Cook, Legal Services, (515) 281-3994.

Internet Page: <https://www.legis.iowa.gov/committees/committee?groupID=662>

STUDIES COMMITTEE OF THE LEGISLATIVE COUNCIL

August 10, 2015

Chairperson: Senator Michael E. Gronstal

Vice-Chairperson: Speaker Kraig Paulsen

Overview. The Studies Committee considered mandates in statute and proposals for 2015 interim studies contained in other requests, and recommended the actions listed in this briefing. The recommendations were approved by the Legislative Council.

2015 Interim Studies. Studies were authorized for the 2015 interim with the indicated number of members and meeting days to address the following topics:

Statutory Committees

- **Legislative Fiscal Committee** (Iowa Code §§2.45(2) and 2.46)

Charge: The committee is a permanent legislative committee under the Legislative Council. Duties include directing the administration of performance audits and visitations, studying the operation of state government and making recommendations regarding reorganization to the General Assembly, and conducting studies as assigned by the Legislative Council.

Members: 5 Senate / 5 House

Meeting Days: 2 days

- **Legislative Tax Expenditure Committee** (Iowa Code §§2.45(5) and 2.48)

Charge: The committee is a permanent legislative committee under the Legislative Council. Duties include approving annual estimates of the cost of tax expenditures by December 15 each year, and performing a scheduled review of specified tax credits so that each credit is reviewed at least every five years. The fifth scheduled review is in 2015.

Members: 5 Senate / 5 House

Meeting Days: 2 days

(Studies Committee of the Legislative Council continued from Page 3)

- **State Government Efficiency Review Committee** (Iowa Code §2.69)
Charge: The committee is a permanent legislative committee with five Senate and five House members appointed by legislative leaders at the beginning of a new General Assembly. The committee is required to meet, as directed by the Legislative Council, at least every two years, to review state government organization and efficiency options and receive state government efficiency suggestions offered by the public and public employees. The second report was submitted in 2015 and the third report is due in January 2017.
Members: 5 Senate / 5 House
Meeting Days: 1 day
 - **Public Retirement Systems Committee** (Iowa Code §97D.4)
Charge: The committee is a permanent legislative committee that is required to review and evaluate all public retirement systems in place in Iowa, including the Iowa Public Employees' Retirement System (IPERS), the Municipal Fire and Police Retirement System of Iowa (Iowa Code chapter 411), the Department of Public Safety Peace Officers' Retirement System (PORS), and the Judicial Retirement System. The committee typically meets during the legislative interim of odd-numbered years.
Members: 5 Senate / 5 House
Meeting Days: 2 days
 - **Iowa Commission on Interstate Cooperation** (Iowa Code §§28B.1 and 28B.2)
Charge: Carry forward Iowa's participation as a member of the Council of State Governments; encourage and assist the friendly contact between officials and employees of this state and officials and employees of other states, the federal government, and local governments and encourage cooperation in the adoption of compacts and uniform laws. The Commission is required to be appointed in accordance with a resolution of the Legislative Council.
Members: 5 Senate / 5 House
Meeting Days: As approved by Legislative Leadership
 - **Telecommunications Company Property Tax Review Committee** (2013 Iowa Acts, chapter 123, §36)
Charge: Review the information and recommendations included in a report required to be submitted by the Department of Revenue by August 1, 2015, detailing recommendations for changes to the current system of assessing telecommunications company property and levying property tax against telecommunications services companies.
Members: 3 Senate / 3 House
Meeting Days: 1 day
- Other Interim Studies**
- **Recycling Policy Study Committee**
Charge: Evaluate the effectiveness of the implementation of recycling policies in Iowa, including but not limited to bottle deposits, handling fees, government oversight and involvement, and the incidence of unreturned containers. The committee shall consult with distributors, retailers, customers, recyclers, and other interested stakeholders, to obtain their input, and shall submit recommendations, if deemed appropriate, to the General Assembly by January 1, 2016.
Members: 3 Senate / 3 House
Meeting Days: 1 day
 - **School Finance Inequities Study Committee**
Charge: Review current provisions of the school finance formula and consider alternatives for achieving a more equitable application across all public school districts in the state. Aspects of the study shall include transportation funding with a particular emphasis on small and rural school district transportation funding levels, school district property taxation levels, at-risk student funding challenges, and other school finance formula provisions which may result in funding disparities between school districts. Based on stakeholder input from the Department of Education, school districts, education-related organizations and associations, and other interested stakeholders, the committee shall submit recommendations, if deemed appropriate, to the General Assembly by January 1, 2016.
Members: 5 Senate / 5 House
Meeting Days: 2 days

(Studies Committee of the Legislative Council continued from Page 4)

- **Gambling Casino Restricted License Study Committee**

Charge: Conduct a study regarding licensing of a non-smoking casino in Cedar Rapids, and submit recommendations, if deemed appropriate, to the General Assembly, by January 1, 2016.

Members: 3 Senate / 3 House

Meeting Days: 1 day

Other Studies-Related Items

The Committee recommended adoption by the Legislative Council of the Resolution establishing the Iowa Commission on Interstate Cooperation.

LSA Contacts: Richard Nelson, Legal Services, (515) 242-5822; Andrew Ward, Legal Services, (515) 725-2251.

Internet Page: <https://www.legis.iowa.gov/committees/committee?groupID=663>

ADMINISTRATIVE RULES REVIEW COMMITTEE

August 11, 2015

Chairperson: Representative Dawn Pettengill

Vice-Chairperson: Senator Wally Horn

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT, *Storage and Handling of Anhydrous Ammonia, 07/22/15 IAB, ARC 2059C, ADOPTED.*

Background. This rulemaking adopts the newest national standards for the safety and handling of anhydrous ammonia, with some exceptions.

Commentary. Department representatives explained the rule and the national standard it incorporates. They noted that a delay of the rule is being sought because it would have the effect of prohibiting the addition of oxygen to an anhydrous ammonia tank. The addition of oxygen is part of certain anhydrous ammonia technology manufactured and used in Iowa, which would no longer be allowed under the rule. The representatives stated that the department believes this practice is unsafe because it can lead to cracking on the inside of a tank, which may cause an explosion. They stated that multiple states have banned the practice, and the federal Environmental Protection Agency, the federal Department of Transportation, and one insurance company have expressed concern about the practice.

Public comment was heard from representatives of Quality Plus Manufacturing (QPM), a manufacturer of agricultural equipment. The representatives explained that subrule 5.10.3 of the national standard would prohibit the use of QPM's Flow Assist technology, which includes the addition of oxygen to an anhydrous ammonia tank. They discussed their technology and the history of their company. The QPM representatives disputed the department's contention that their technology is unsafe, stating that it has been thoroughly tested and studied and that no safety problems have occurred. They stated that no other state has adopted subrule 5.10.3 of the national standard. They also noted that the department had previously determined that their technology was illegal, and the Attorney General ultimately disagreed.

Public comment was also heard from an individual who works with pressure vessels such as the technology in question, including providing inspections and training. He stated that the technology is unsafe and would not be approved by the federal Environmental Protection Agency if audited. He stated that individuals who use the technology are not always properly trained.

Committee members had many questions regarding the Flow Assist technology, including how it was developed, how it works, its safety record, possible alternatives, and how the rule will affect it. Committee members expressed uncertainty regarding the complex technical details of the technology. The department and QPM repeatedly disagreed about the safety of the technology.

Action. A motion for a session delay passed by a seven-to-three vote (seven votes required to pass).

ENVIRONMENTAL PROTECTION COMMISSION, *Topsoil Preservation at Construction Sites, 07/08/15 IAB, ARC 2054C, ADOPTED.*

Background. This rulemaking amends National Pollutant Discharge Elimination System General Permit No. 2, which relates to the discharge of stormwater from construction sites. In October 2012, the Environmental Protection Commission (EPC) adopted a rule requiring developers to leave construction sites with at least four inches of topsoil, as long as at least four inches of topsoil existed prior to the development of the property. This rulemaking eliminates the specific depth required and instead requires developers to, "unless infeasible, preserve topsoil."

(Administrative Rules Review Committee continued from Page 5)

Commentary. The EPC pursued this rulemaking upon the recommendation of a group of stakeholders tasked with reviewing the rule by Governor Branstad in Executive Order 80. The stakeholder group consisted of seven total members: four representatives of the construction industry, one from a landscaping company, one from an environmental organization, and one EPC member. Representatives from the Department of Natural Resources (DNR), which oversees the EPC, acknowledged the stakeholder group and this rulemaking were initiated in response to complaints from the construction industry.

The EPC held three public meetings and received over 700 comments in response to the rule. DNR representatives acknowledged the comments in opposition to this rulemaking outnumbered those in favor by a factor of ten to one. They stated that the DNR has done no cost-benefit analysis of this rule change, asserting such an undertaking would be infeasible. They also stated that the language being adopted by this rulemaking is nearly identical to language enforced by the federal Environmental Protection Agency.

Two homeowners from a neighborhood in Waukee, Iowa attended the meeting to speak against the rule change. They were followed by another individual and representatives from the Iowa Chapter of the Sierra Club, 1000 Friends of Iowa, and the Iowa Environmental Council. The opposition comments generally claimed that the rulemaking would increase water runoff, causing environmental problems, and would be difficult to implement and enforce.

The chairperson of the stakeholder group, a representative of the Home Builders Association of Greater Des Moines, spoke in support of the rulemaking. He was also involved when the EPC adopted the four-inch requirement. He testified that the initial projection for costs borne by developers due to the four-inch requirement was between \$300 and \$500 per home. Instead, developers have incurred costs of close to \$5,000 per home.

Action. A motion for a session delay failed by a five-to-three vote (seven votes required to pass). A subsequent motion for a general referral passed by a vote of eight to one.

Next Meeting. The next committee meeting will be held in Statehouse Room 116, on Tuesday, September 8, 2015, beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

Internet Page: <https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705>

LEGAL UPDATES

Purpose. Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other interested persons of legislative issues that are the subject of state court and federal district court decisions and regulatory actions, United States Supreme Court decisions, and Attorney General Opinions, including issues involving the constitutionality and interpretation of statutes adopted by the General Assembly. Although a briefing may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.

LEGAL UPDATE—OPERATING WHILE INTOXICATED: REASONABLE SUSPICION AND IMPLIED CONSENT

Filed by the Iowa Supreme Court

January 9, 2015

State of Iowa v. Carrie McIver

No. 13-1106, 858 N.W.2d 699 (Iowa 2015)

http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20150109/13-1106.pdf

Factual Background. On October 14, 2012, a peace officer performed a traffic stop on a vehicle operated by the defendant, Carrie McIver, after the officer observed the vehicle exit a parking lot by traveling over a grassy area, down a sidewalk, and over the curb of a street, on which the vehicle proceeded to weave within its lane of travel. The officer had McIver perform a variety of field sobriety tests, most of which she failed. However, the officer was unable to detect the odor of alcohol on her breath and failed to obtain a reading from a preliminary breath test. After McIver refused further preliminary testing, the officer arrested her for improper use of lanes in violation of Iowa Code section 321.306.

At the jail, a second officer invoked Iowa's implied consent law and requested that McIver submit to a breath test. She refused and requested that a blood test be performed instead because she was taking prescription medication. The officer informed her that she could obtain a blood test after submitting to a breath test. She continued to refuse the breath test, and as a result, no test was administered.

Procedural Background. McIver was charged with operating while intoxicated. Before trial, she moved to suppress the evidence against her, claiming that there was no probable cause or reasonable suspicion for the traffic stop, and that the officer violated Iowa's implied consent law by failing to administer a blood test after acquiring reasonable grounds to believe she was impaired by a prescription drug. The district court denied her motions to suppress and found her guilty at trial. She appealed, claiming the district court erred in failing to suppress the evidence against her.

Issues. The Iowa Supreme Court (Court) considered two issues on appeal. First, the Court evaluated whether the traffic stop was valid under the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Iowa Constitution. Second, the Court assessed whether a peace officer is required to offer a blood or urine test instead of a breath test to a motorist reasonably suspected of driving under the influence of a drug other than alcohol.

Analysis.

Claims Brought Under the United States and Iowa Constitutions. Although the Court considers claims brought under the Iowa Constitution independently of claims brought under the United States Constitution, McIver did not argue that any difference exists in the scope or effect of the constitutional provisions. Therefore, the Court analyzed McIver's claims under both constitutions in the same manner.

Validity of the Traffic Stop. A traffic stop is permissible when supported by either probable cause, which is necessary to make an arrest, or reasonable suspicion of a crime, which is necessary to briefly detain a person for further investigation. When an officer observes any type of traffic violation, the violation establishes both probable cause and reasonable suspicion. The parties disagreed about whether the officer observed a violation of a traffic law before initiating the traffic stop on McIver, but the Court found that line of analysis unnecessary. Instead, the Court determined the officer had reasonable suspicion to believe McIver was operating the vehicle while intoxicated due to a variety of circumstances, including the fact the traffic stop took place shortly after the bars in the area had closed for the night, the manner in which the vehicle was operated when it left the parking lot, and the fact the vehicle weaved within its lane of travel.

Interpretation of Iowa's Implied Consent Law. The Court applies a statute based on its plain meaning. If a statute is ambiguous, the Court engages in statutory interpretation. The statute at issue, Iowa Code section 321J.6(3), states, in part, "[n]otwithstanding subsection 2, if the peace officer has reasonable grounds to believe that the person was un-

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der the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a blood or urine test shall be required even after another type of test has been administered.”

Mclver argued that the phrase “a blood or urine test shall be required” requires an officer to affirmatively request a blood or urine test after the officer has reasonable grounds to believe a motorist is under the influence of a drug other than alcohol. The State argued that the phrase requires a motorist to submit to a request for a blood or urine test only if such a request is made by an officer. The Court determined that the statute was ambiguous due to the absence of a noun or pronoun in the phrase that would demonstrate whether the officer is required to request the test, or the motorist is required to submit to the test when requested.

To resolve the ambiguity, the Court analyzed the statute’s background and history. Iowa’s implied consent law was enacted in 1963 and contained two subsections that generally contemplated administering a single test to determine the alcoholic content of a motorist’s blood. Before 1986, when subsection 3 was added by the Legislature, the law did not specifically require a motorist to submit to multiple tests, even when the results of the initial test did not indicate alcohol intoxication but the officer maintained reasonable grounds to believe the cause of intoxication may be a drug other than alcohol.

The Court determined that the enactment of subsection 3 indicated the Legislature’s intent to supplement the existing implied consent procedures for the purposes of filling a gap in the law by requiring a motorist to submit to additional testing when an officer has reasonable grounds to believe the cause of intoxication may be a drug other than alcohol. The Court recognized that Iowa’s implied consent law is built on the premise that consent imposes a requirement on motorists to submit to testing when testing is properly requested. In addition, the Court noted that subsection 3 was not related to assisting motorists in obtaining evidence to support a prescription-drug defense, because the statute relating to the prescription-drug defense was not amended by the Legislature until 1998. Finally, the Court found that the addition of the option for an officer to request a blood test under subsection 3, which was enacted by the Legislature in 1998, served to strengthen an officer’s position rather than impose a new requirement on an officer.

Holding. The Court held that the district court properly overruled Mclver’s motions to suppress for two reasons: the traffic stop was valid because the officer had reasonable suspicion to believe Mclver was operating the vehicle while intoxicated, and Iowa Code section 321J.6(3), requires a motorist to submit to a blood or urine test when such a test is properly requested, but does not require an officer to request a blood or urine test.

Concurrence and Dissent. Justice Wiggins, joined by Justices Hecht and Zager, wrote an opinion concurring in part and dissenting in part. The Justices agreed the traffic stop was valid and Iowa Code section 321J.6(3) is ambiguous, but disagreed with the majority’s resolution of the ambiguity. Justice Wiggins wrote that the addition of the blood test option by the Legislature in 1998 indicated the Legislature’s intent to give meaning and support to the amended prescription-drug defense statute enacted the same year. In addition, Justice Wiggins noted that Iowa Code section 321J.6(3), which originally stated that “a urine test may be required,” was amended to state “a blood or urine test shall be required.” By changing the word “may” to “shall,” Justice Wiggins concluded that the Legislature intended to require an officer to arrange to administer a blood or urine test when the officer has reasonable grounds to believe the cause of intoxication may be a drug other than alcohol.

LSA Monitor: Nicholas Schroeder, Legal Services, (515) 725-7323.

LEGAL UPDATE—STATE INCOME TAXATION OF RESIDENT INDIVIDUALS

Filed by the United States Supreme Court
May 18, 2015

Comptroller of the Treasury of Maryland v. Wynne
No. 13-485, 135 S.Ct. 1787 (2015)

http://www.supremecourt.gov/opinions/14pdf/13-485_o7jp.pdf

Background Facts and Prior Proceedings. Maryland, like many other states (including Iowa), taxes all the income its residents earn both inside and outside the state. Maryland’s resident income tax scheme has two components: a “state” income tax and a “county” income tax. The “state” income tax consists of a set of graduated rates, and the “county” income tax consists of one capped rate set by the county. Both of these taxes are collected by the Maryland State Comptroller of the Treasury (Comptroller). Maryland residents who pay income taxes to another jurisdiction for income earned in that jurisdiction are allowed a credit for those taxes against the “state” tax, but not

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against the “county” tax.

Maryland also taxes nonresidents on the income they earn from sources within Maryland, and, in lieu of the resident “county” tax, imposes a “special nonresident” tax equal to the lowest “county” tax rate.

In 2006, two Maryland residents, Brian and Karen Wynne (Wynnes), owned stock in a Subchapter S corporation that earned income in numerous states. By operation of federal and state law, this income passed through the corporation to the Wynnes and was taxable to them on an individual basis. The Wynnes owed tax to several other states as a result of this corporation’s business activity. On their 2006 Maryland income tax return, the Wynnes claimed an income tax credit for the income taxes paid to the other states. Pursuant to Maryland law, the Comptroller allowed this credit against the “state” tax, but not against the “county” tax, and assessed a tax deficiency against the Wynnes.

The Maryland Tax Court affirmed the finding of the Comptroller, but the Circuit Court for Howard County reversed on the ground that the tax scheme violated the Commerce Clause of the Federal Constitution. The Court of Appeals of Maryland affirmed the judgment of the Circuit Court. The United States Supreme Court (Court) granted certiorari.

Issue. Whether taxing all the income of a resident without offering a credit for taxes paid on income earned in other states violates the Commerce Clause of the Federal Constitution.

Holding. Maryland’s individual income tax scheme violates the dormant Commerce Clause of the Federal Constitution.

Dormant Commerce Clause. The Commerce Clause of the Federal Constitution grants Congress the power to regulate commerce among the several states. The Court has consistently held that this power also contains a negative command, referred to as the “dormant Commerce Clause,” that prohibits states from discriminating against, or unduly burdening, interstate commerce in the absence of Congressional approval. The Court has developed a four-part test to determine the validity of state tax laws under the dormant Commerce Clause: the laws must be applied to an activity with a substantial nexus in the state, must be fairly apportioned, must not discriminate against interstate commerce, and must be fairly related to the services provided by the state.

Majority Opinion by Justice Alito. The majority concluded that Maryland’s individual income tax scheme discriminated against interstate commerce. The Court relied principally on three prior Court cases (involving the taxation of domestic corporation income) that struck down tax schemes that resulted in double taxation of interstate income and that discriminated in favor of intrastate economic activity. The Court also analyzed Maryland’s income tax scheme against the so-called “internal consistency test.” This test, created by the Court to analyze the constitutionality of state tax laws under the Commerce Clause, assumes that every state has adopted the tax law at issue thereby allowing the Court to evaluate whether its uniform application causes interstate commerce to be taxed at a higher rate than intrastate commerce. It helps the Court differentiate between tax laws that are inherently discriminatory against interstate commerce (typically unconstitutional), and tax laws that could create double taxation of income, or disparate incentives to engage in interstate commerce, only because of the interaction between two different but nondiscriminatory tax laws (typically constitutional). When analyzed in this context, the Court determined that Maryland’s individual income tax scheme fails the test. A Maryland resident earning income solely in another state (State B) would be subject to Maryland’s “county” tax on that income by virtue of being a Maryland resident, but would also be subject to the “special nonresident tax” in State B on the same income. A different Maryland resident earning income solely in Maryland would only be subject to Maryland’s “county” tax. Maryland’s tax scheme causes individuals to pay more total income tax solely because income is earned from interstate activity, and subjects interstate income to the risk of double taxation. The Court likened this tax scheme to state tariffs, which, it stated, are “so patently unconstitutional that our cases reveal not a single attempt by any state to enact one.”

The Court stated that Maryland could remedy its faulty tax scheme by offering a credit against the “county” tax for income taxes paid to other states. The Court also noted the possibility that Maryland could comply with the dormant Commerce Clause in other ways, but it declined to speculate further.

Dissent by Justice Ginsburg. The principal dissent, filed by Justice Ginsburg and joined by Justices Scalia and Kagan, argued that the majority’s holding violated the Court’s prior decisions and its long-held principle that a state may tax all the income of its residents, even income earned outside the state, regardless of whether another state exercises its taxing authority on that income. The principal dissent reasoned that differing treatment by states of residents and nonresidents is warranted because more services and benefits are provided to residents, therefore more may be demanded of them, regardless of any obligations they may have to other states. Moreover, residents, through the political process, have the ability to ensure that their state’s power to tax their income is not abused. The principal dissent noted the Court’s past observation that “it is not a purpose of the Commerce Clause to protect state

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residents from their own state taxes.”

The principal dissent criticized the cases relied on by the majority because they involved taxes on gross receipts other than net income. The principal dissent noted that the Court historically distinguished between the two because gross receipts taxes are more burdensome than net income taxes, and argued that the Court has not, as the majority contended, already rejected this formal distinction.

The principal dissent also criticized the majority’s use of the internal consistency test, noting that the Court has not struck down a state tax for failing the test in nearly 30 years, and has even upheld state taxes that fail the test. The principal dissent also considered the test to be flawed in its application, arguing that the internal inconsistency of Maryland’s tax scheme could be remedied by eliminating the “special nonresident” tax, a measure that would not grant the Wynnes relief from the double taxation of their income.

Finally, the principal dissent rejected the majority’s claim that Maryland’s tax scheme operated as a tariff, reasoning that it actually taxes residents’ in-state and out-of-state income at the same rate, and therefore did not discriminate against out-of-state income.

Dissents by Justices Scalia and Thomas. Justices Scalia and Thomas filed separate dissents in which they each argued that the Commerce Clause does not contain a dormant Commerce Clause. Chief among the reasons is that the text of the Commerce Clause does not contain any language prohibiting state laws that burden commerce. In further support of their position, the Justices noted the lack of discussion from the framers about such a prohibition on the states during the ratification of the Constitution, and the fact that, during such ratification period, states made regulations that burdened interstate commerce and imposed income taxes with no credit for other income taxes paid.

Justice Scalia further opined that the dormant Commerce Clause lacks a governing principle, is unstable, has led the Court to create a variety of ad hoc tests and exceptions, and is incompatible with the judicial role because it requires the Court to balance the needs of commerce against the needs of state governments. He stated that such balancing is a task for legislators, not judges.

Impact on Iowa. It remains to be seen whether this decision will have an impact on Iowa. Iowa’s individual income tax scheme is similar in many respects to the Maryland tax scheme struck down by the Court. Iowa imposes an income tax on its residents’ entire income, but provides a credit for “the amount of income tax paid to another state or foreign county” on “income derived outside of Iowa.” Iowa’s local governments have the option to impose (without a credit for other state or foreign taxes paid) certain surtaxes on the Iowa income tax of residents living within their boundaries. However, these local government surtaxes are not imposed on nonresidents, thus Iowa has nothing similar to the “special nonresident” tax imposed in Maryland. The principal dissent opined that Maryland’s tax scheme would be constitutional if (like Iowa) it did not include a “special nonresident” tax. Nevertheless, this case certainly imposes additional constitutional constraints on state income taxation, and the allowance to Iowa residents of tax credits for taxes paid in other states can no longer be considered purely a matter of public policy.

LSA Monitor: Michael Mertens, Legal Services, (515) 281-3444.