



State & Local Tax Cases To Watch In 2020

By [Maria Koklanaris](#)

Law360 (January 1, 2020, 12:04 PM EST) -- From high-stakes state tax petitions before the [U.S. Supreme Court](#) to state courts' examinations of taxing software and apportionment, 2020 is shaping up to be another year of citable cases in state taxation.

One of the most controversial decisions of 2019, according to state tax practitioners, came out of the Utah Supreme Court when it found that corporations, but not individuals, enjoy dormant commerce clause protections from discriminatory state taxation. The petitioners in that case are actively trying to move it to the nation's highest court.

Meanwhile, in state court action, [Citrix Systems Inc.](#) is waiting for a [Massachusetts Supreme Judicial Court ruling on whether its webinar](#) and screen-sharing subscriptions are subject to Massachusetts sales tax.

Here, Law360 looks at key state and local tax cases to watch in 2020.

Steiner v. [Utah Tax Commission](#)

In what has proven to be one of the most contentious state tax decisions of the year, the Utah Supreme Court in August rejected a Utah couple's bid to deduct foreign-earned income for income tax purposes. The court held that neither the U.S. Constitution nor the state tax code requires that Utah grant the deductions.

But the court's reasoning spurred the couple, Robert Steiner and Wendy Steiner-Reed, to immediately begin preparations to ask the U.S. Supreme Court for a writ of certiorari, [which they did on Dec. 12.](#)

The Steiners' petition, filed by veteran Supreme Court litigator Neal Katyal, told the justices Utah's policy of allowing credits for taxes paid on state income but not for taxes paid on foreign income is unconstitutional. It amounts to double taxation on the foreign income and is discriminatory, the petition said.

Many state tax professionals found the Utah court's reasoning shocking, both for the holding that individuals are not protected from discriminatory state taxation under the dormant foreign commerce clause while corporations are and for its analysis of the U.S. Supreme Court's decision

in [Comptroller of the Treasury v. Wynne](#).

In *Wynne*, the justices held that a Maryland tax regime was unconstitutional because it allowed credits against state income tax for taxes paid in other states but didn't allow a credit for local taxes paid. The court grounded its decision on a determination that the Maryland tax regime violated the internal consistency test, which generally prohibits taxing the same income more than once.

The Utah court, however, interpreted *Wynne* to hold that the internal consistency test is the only one that matters when considering the constitutionality of a tax imposed on individuals. It essentially deemed irrelevant the external consistency test, which considers whether the tax levied by a state is consistent with the taxpayer's activities in the state.

Jamie Yesnowitz, a state and local tax principal with [Grant Thornton LLP](#), told Law360 he was "taken aback" by that assertion from the Utah Supreme Court.

"Particularly surprising was the Utah Supreme Court's view that the external consistency test should not apply when individual — in contrast to corporate — taxpayers are challenging a state tax system," Yesnowitz said.

The Utah Supreme Court also seemed to ignore higher court precedent established in the landmark *South Dakota v. Wayfair* decision, Yesnowitz said. He hopes the justices would take the Steiners' case.

The Utah court "implied that after *Wynne*, the continuing vitality of the Complete Auto four-prong test — of which fair apportionment is a part — was in 'serious doubt,'" Yesnowitz said.

He added that did not seem to conform with *Wayfair*, "in which the majority opinion embraced [Complete Auto](#)" a case in which the U.S. Supreme Court established a four-part test that determined when a state may impose a tax without violating the commerce clause.

The case is *Robert C. Steiner et ux., Applicants v. Utah State Tax Commission*, case number 19A426, in the U.S. Supreme Court.

Arizona v. California

Arizona is [suing its sister state](#) for wrongful taxation of Arizona residents and has asked the U.S. Supreme Court to hear the case, claiming that, as a matter between two states, the U.S. Supreme Court should be the body to resolve it.

But its hopes were dampened significantly on Dec. 9, when the U.S. solicitor general weighed in and suggested that the court should not accept the case as a matter of original jurisdiction. Solicitor General Noel Francisco told the justices that California's taxation of Arizona residents who had done nothing more than invest in a California company does not violate the U.S. Constitution. Francisco also agreed with California that the taxpayers at issue have other remedies.

“Arizona does not assert the types of interests that would warrant such an exercise, and the issues Arizona seeks to present can be adequately raised and litigated by Arizona entities that are actually subject to the tax,” the solicitor general said. “In addition, Arizona’s due process and commerce clause claims would more appropriately be considered on developed factual records concerning affected entities and with the benefit of authoritative interpretations of the relevant statutes by the California courts.”

Arizona has a good case on the merits, Michael Lurie of [Reed Smith LLP](#) told Law360, but the solicitor general’s opinion is not a surprise.

“If I were the solicitor general, I think I would say the merits favor the taxpayers, but I’m flagging procedural concerns for this court,” Lurie said. “As much as I think California is misguided, I think their position in this discrete litigation might just be narrow enough that they could hold off this challenge.”

The case is Arizona v. California, case number 220150, in the U.S. Supreme Court.

Citrix Systems v. Commissioner of Revenue

In a closely watched case that features a state Supreme Court considering the taxability of cloud computing, Citrix and Massachusetts are at odds over whether the company’s webinar and screen-sharing subscriptions are subject to Massachusetts sales tax.

Citrix is arguing that because it maintains control of its software at all times, its customers are receiving nontaxable cloud-computing services without purchasing any tangible personal property. Therefore, it claims that its software falls outside the jurisdiction of a Massachusetts statute that taxes all software in any form.

Citrix also claims that the statute requires some kind of transfer, and remotely accessed software doesn’t involve one. Further, it argues that what it sells isn’t really software but rather a service.

In 2017, the state Appellate Tax Board found for the Massachusetts tax agency. It determined the transactions were taxable under a 2006 regulation that taxes “transfers of rights to use software installed on a remote server” and that remote access to software on Citrix’s servers was the “true object” of the subscriptions. Citrix appealed, and the case went directly to the Supreme Judicial Court, whose decision is expected early in 2020.

“I suspect a lot of the statutes in other states are drafted just like Massachusetts’ are,” Richard Jones of [Sullivan & Worcester LLP](#) told Law360. “This decision could have impact outside the state.”

The case is Citrix Systems Inc. v. Commissioner of Revenue, case number SJC-12741, in the Massachusetts Supreme Judicial Court.

State of Arizona v. Arizona Board of Regents and John P. Creer

Arizona's tax court is considering a suit brought by the state's attorney general against the state Board of Regents and Arizona State University, in which the attorney general claims the university is giving a hotel corporation millions in gifts.

The gifts, the attorney general claims, include \$37 million in below-market property valuations and funding, as well as a property tax exemption. Under the deals, an affiliate of [Omni Hotels Management Corp.](#) is leasing land owned in Tempe by the Arizona Board of Regents at below-market rates and benefiting from the resulting property tax exemptions, the attorney general said.

The university has countered that the money is not a gift, but an investment that will yield about \$140 million in revenue for the university.

Regardless of its findings, the tax court is highly unlikely to be the final word on the subject, according to Pat Derdenger of [Lewis Roca Rothgerber Christie LLP](#). He said the case is of high interest in Arizona tax circles and beyond.

The university is employing "a neat economic development tool, but the city of Tempe, I don't think, is too thrilled" to lose potential property tax revenue, Derdenger said. "This is an interesting and intriguing case that is going up to the Court of Appeals and the [Arizona Supreme Court](#)."

The case is State of Arizona v. Arizona Board of Regents and John P. Creer, case number TX2019-000011, in the Arizona Tax Court.