No. 150, Original

In the Supreme Court of the United States

STATE OF ARIZONA,

Plaintiff,

v.

STATE OF CALIFORNIA,

Defendant.

ON MOTION FOR LEAVE TO FILE A BILL OF COMPLAINT

BRIEF IN OPPOSITION

XAVIER BECERRA
Attorney General of California
EDWARD C. DUMONT
Solicitor General
DIANE S. SHAW
Senior Assistant Attorney General
JOSHUA PATASHNIK*
Deputy Solicitor General
CRAIG D. RUST
Deputy Attorney General
STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004
(415) 510-3896
Josh.Patashnik@doj.ca.gov
**Counsel of Record*

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STATEMENT

1. California law imposes certain taxes on corporations, limited liability companies (LLCs), and other business entities operating in the State. The claims Arizona seeks to bring here focus on California's taxation of LLCs, which are hybrid business entities that share characteristics with both partnerships and corporations. *See generally* Cal. Corp. Code §§ 17701.01-17701.17. For example, like a partner in a partnership, a member of an LLC typically has the right to participate in the management of the LLC. *See id.* § 17704.07. On the other hand, members of LLCs enjoy limited liability for the actions of the LLC, much like shareholders in a corporation. *See id.* § 17703.04. From a tax perspective, under current law, an LLC may choose to be taxed as either a corporation or a partnership. *See City of Los Angeles v. Furman Selz Capital Mgmt.*, 121 Cal. App. 4th 505, 513-514 (2004). An LLC that elects to be taxed as a partnership pays no income tax itself. Taxable income and related tax attributes are instead treated as "flowing through" to the LLC's members, as further discussed below.

Any LLC "doing business in" California is subject to an annual minimum franchise tax of $800. Cal. Rev. & Tax. Code §§ 17941(a), 23153(d).[1] "Doing business" means "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." *Id.* § 23101(a). The claims here concern California's

[1] The tax is described as a "minimum franchise tax" because corporations must pay the greater of the minimum franchise tax or a certain percentage of their net income. *See* Cal. Rev. & Tax. Code §§ 23151(a), 23153(d). LLCs that elect to be taxed as partnerships are subject to both the $800 minimum franchise tax and additional fees ranging from $0 to $11,790 depending on their net income from California sources. *See id.* § 17942(a).

ability impose the minimum franchise tax on members of LLCs that elect to be taxed as partnerships.

The California Franchise Tax Board generally administers personal income taxes and business taxes in the State, including the minimum franchise tax. *See* Cal. Gov't Code § 15700; Cal. Rev. & Tax. Code § 19501. California law sets forth procedures the Board follows in assessing and collecting taxes. When it appears that a taxpayer has failed to file a tax return in a year in which the taxpayer owes tax, the Board issues the taxpayer a demand to file a return. Cal. Rev. & Tax. Code § 19087; *see* Ariz. Proposed Complaint Exs. F, J. If the taxpayer fails to file a return, or files a return disclosing a tax amount less than is owed, the Board mails the taxpayer a notice of proposed assessment specifying the amount owed. Cal. Rev. & Tax. Code §§ 19033(a), 19087; *see* Ariz. Proposed Complaint Exs. G, K.

A taxpayer who believes the Board has erred in its assessment may file a protest before paying any tax. Cal. Rev. & Tax. Code § 19044. The Board includes information regarding this protest procedure with every notice of proposed assessment it sends.[2] If a taxpayer files a protest, the Board "shall reconsider the assessment of the deficiency and, if the taxpayer has so requested in his or her protest, shall grant the taxpayer or his or her authorized representatives an oral hearing." *Id.* § 19044(a).

A taxpayer dissatisfied with the Board's reconsideration may file an administrative appeal to the Office

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[2] Arizona has omitted this information from the reproduction of the notices it has attached to its proposed complaint. *See* Proposed Complaint Exs. G, K.

of Tax Appeals, also before paying any tax. *See* Cal. Rev. & Tax. Code §§ 19045, 19047.[3] That process allows taxpayers to present their case to a panel of administrative law judges through written briefing and an oral hearing. *See* Cal. Code Regs. tit. 18, §§ 30303, 30401. The Office publishes a written opinion for each appeal decided, and has the option of designating decisions as precedential or nonprecedential. *See id.* § 30501.

If a taxpayer files no protest, or if the protest and any administrative appeal are unsuccessful, payment of the assessed tax becomes mandatory. The Board mails a notice alerting the taxpayer to the balance due. Cal. Rev. & Tax. Code § 19049; *see, e.g.*, Ariz. Proposed Complaint Exs. H, L. If the taxpayer fails to pay the assessed amount, the Board has a variety of collection tools available. As relevant here, the Board may send the taxpayer's bank a notice of the liability and require the bank to withhold and transmit to the Board funds sufficient to satisfy that liability. Cal. Rev. & Tax. Code § 18670(a).

Once the tax is paid, the taxpayer may commence a refund action in superior court. Cal. Rev. & Tax. Code § 19382. A taxpayer need not resort to the prepayment administrative appeal process described above, though the taxpayer must present the refund claim to the Board before proceeding to court. *See id.*; *id.* § 19322. In the tax refund action, the trial court makes a *de novo* determination regarding whether the assessment was proper. *Tenneco W., Inc. v. Franchise Tax Bd.*, 234 Cal. App. 3d 1510, 1520 (1991). The trial

[3] Before 2018, the State Board of Equalization heard tax appeals. With exceptions not relevant here, legislation transferred that function to the newly created Office of Tax Appeals. *See* Cal. Gov't Code § 15670; Cal. Rev. & Tax. Code § 20(b).

court's judgment is then reviewable on appeal in the ordinary manner.

2. In recent years, the Board and California courts have addressed the applicability of the minimum franchise tax to out-of-state business entities operating in California through LLCs. In July 2014, the Board published Legal Ruling 2014-01, which determined that an LLC's tax election should govern how its members are treated for purposes of the minimum franchise tax.[4] If an LLC elected to be taxed as a partnership, the issue of whether the LLC's members were "doing business" in California through the LLC would be determined by reference to partnership tax law; if the LLC elected to be taxed as a corporation, corporate tax law would guide the inquiry. Legal Ruling 2014-01 at 2.

The Board's legal ruling focused in particular on LLCs that elect to be taxed as partnerships. Partners in general partnerships derive their "share of partnership income and loss from the place where the partnership transacts business," not the place where the individual partner is located. Legal Ruling 2014-01 at 3-4. As a result, for tax purposes, partners are considered to be "doing business" where the partnership does business. *Id.*

The Board determined that the same principles governing taxation of general partnerships should apply to LLCs that elect to be taxed as partnerships. The Board reasoned that, like general partners, "[m]embers of LLCs generally have the right to participate in the management of the business" and to control its operations. Legal Ruling 2014-01 at 4. "This is true even

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[4] Available at https://www.ftb.ca.gov/law/rulings/active/lr14_01.pdf.

in the case of 'manager-managed' LLCs," because members of such LLCs choose "to delegate the power to manage the business in favor of a manager, and [possess] the power to revoke that delegation at any time." *Id.*; *see* Cal. Corp. Code § 17704.07. Because of this right of participation and control on the part of LLC members, the Board concluded that any business entity that is a member of an LLC that does business in California and elects to be taxed as a partnership would itself be required to pay the minimum franchise tax of $800. Legal Ruling 2014-01 at 4.

The California Court of Appeal considered a challenge to the Board's position in *Swart Enterprises, Inc. v. Franchise Tax Board*, 7 Cal. App. 5th 497 (2017). There, an Iowa corporation argued that the Board had erroneously determined it to be "doing business" in California, based solely on its 0.2 percent ownership interest in a California-based LLC. *Id.* at 500. The company also challenged the Board's taxation authority under the Due Process and Commerce Clauses of the U.S. Constitution. *Id.* at 502. Consistent with Legal Ruling 2014-01, the Board argued that the LLC's election to be taxed as a partnership meant that the Iowa corporation was required to pay the $800 minimum franchise tax. *Id.*

The court disagreed, holding that the corporation was not subject to the tax. *Swart*, 7 Cal. App. 5th at 502-503. The court rejected the Board's bright-line rule that any member of a California LLC taxed as a partnership was also "doing business" in California. *Id.* Instead, the court looked to case-specific evidence regarding the member's ability to "manage or control" the LLC's operations. *Id.* at 509.

Based on its assessment of the totality of the circumstances, the court concluded that the Iowa corporation was a purely passive member of the LLC and had no ability to control the LLC's conduct. *Swart*, 7 Cal. App. 5th at 510-513. The court noted that the corporation owned a very small (0.2 percent) interest in the LLC, *id.* at 502-503, that the LLC was managed by a designated manager, rather than by the members themselves, *id.* at 501, and that the specific terms of the LLC's operating agreement prevented the members from managing or controlling the LLC, *id.* at 510. The court also emphasized that the LLC's members' decisions to adopt the operating agreement and delegate control to a manager were made before the Iowa corporation acquired its interest in the LLC, and that the corporation's small interest in the LLC did not give it any material influence over the removal of the manager, *id.* at 512-513. The court specifically left open the possibility that, under different factual circumstances, an out-of-state member of an LLC could exercise control over an in-state LLC in a way that would subject the member to California's minimum franchise tax. *Id.* at 513 n.7.

After the decision in *Swart*, the Board modified the 2014 Legal Ruling to reflect that entities in the factual circumstances of the Iowa corporation at issue in that case are not subject to the minimum franchise tax. *See* Legal Ruling 2018-01 (Oct. 19, 2018);[5] Notice 2017-01 (Feb. 28, 2017).[6] Consistent with *Swart*'s emphasis on the fact-specific nature of the inquiry, however, the Board has not exempted from the tax entities whose

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[5] Available at https://www.ftb.ca.gov/law/rulings/active/2018/01.pdf.

[6] Available at https://www.ftb.ca.gov/law/notices/2017/01.pdf.

circumstances suggest they may exercise greater control over the activities of the California LLC than the Iowa corporation did.

Several taxpayers have challenged that position in prepayment administrative proceedings. To date, most of these challenges have been unsuccessful, with the Office of Tax Appeals (and formerly the State Board of Equalization, *see supra* at 3 n.3) concluding that the taxpayers failed to show that they lacked sufficient ability to manage or control the activities of an LLC operating in California.[7] One published court of appeal opinion has reached a similar conclusion, holding that an out-of-state corporate entity's sole ownership of an LLC doing business in California justified California's taxation of that entity. *See Bunzl Distrib. USA, Inc. v. Franchise Tax Bd.*, 27 Cal. App. 5th 986, 990 (2018). The court also held that California's taxation of that out-of-state entity did not violate the Due Process or Commerce Clauses. *Id.* at 997-999.

One out-of-state business entity has successfully

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[7] *See, e.g.*, *In re De Balmann Family Holdings LLP*, No. 18011095, 2018 WL 6377596, at *2 n.4 (Cal. Off. of Tax Appeals Aug. 23, 2018) (non-precedential decision) (where an LLC doing business in California is owned by a single out-of-state member, member is also doing business in California); *In re Orbis Invest, LLC*, No. 939664, 2017 WL 6419241, at *4 n.3 (Cal. State Bd. of Equalization Aug. 28, 2017) (non-precedential decision) (out-of-state member who owned 50% share of LLC that did business in California held to have a "materially greater" role in LLC's management than the taxpayer in *Swart Enterprises*, and thus was also "doing business" in California); *In re HB Holdings, LLC*, No. 851398, 2017 WL 6419168, at *3 n.4 (Cal. State Bd. of Equalization July 27, 2017) (non-precedential decision) (out-of-state member who owned 66% share of LLC doing business in California was also doing business in California). None of these cases has yet led to a ruling by the California Court of Appeal.

challenged an assessment of the minimum franchise tax in a prepayment administrative proceeding. *See In re Satview Broadband, Ltd.*, No. 18010756, 2018 WL 6378072 (Cal. Off. of Tax Appeals Sept. 25, 2018) (non-precedential decision). There, the Board contended that the out-of-state entity's 25 percent interest in an LLC doing business in California gave the entity sufficient control over the LLC's operations to render it subject to California's tax. *Id.* at *7. In a non-precedential decision, the Office of Tax Appeals disagreed, again focusing on the out-of-state entity's ability to participate in or control the operations of the California LLC. It concluded that while the entity's 25 percent stake exceeded the Iowa corporation's interest in the LLC at issue in *Swart*, on the facts of the case there was no indication that the out-of-state entity could directly or indirectly "influence or participate in the management or operation" of the LLC's business. *Id.*

3. Despite the availability of these demonstrably effective administrative and judicial remedies for taxpayers who believe the Board has improperly sought to assess the minimum franchise tax against them, Arizona seeks leave to file an original action against California in this Court.

The first two counts of Arizona's proposed complaint relate to the assessment of the minimum franchise tax. Arizona alleges that the Board has assessed the tax on "several" Arizona companies that purportedly "have no connection to California whatsoever except purely passive investment in an LLC doing business in California." Proposed Complaint ¶ 3. Arizona's proposed complaint alleges a variety of facts pertaining to five Arizona LLCs in particular. *Id.*

¶¶ 67-118. Arizona claims that, under the circumstances in which these companies operate, California's assessment of the tax violates the Due Process Clause of the Fourteenth Amendment, *id.* ¶¶ 142-150, and the dormant Commerce Clause, *id.* ¶¶ 151-168.

The remaining two counts relate to the Board's collection of taxes. Arizona alleges that California locates money in bank accounts held by Arizona companies, and then demands that those banks remit the unpaid amount of the tax assessments. Proposed Complaint ¶¶ 6-9. Arizona describes this method of tax collection as "seizures," and claims that it violates the Due Process Clause, *id.* ¶¶ 169-179, and the Fourth Amendment, *id.* ¶¶ 180-190.

Arizona contends that its sovereign interests have been injured by what it describes as "continual cross-border incursions into Arizona for purposes of taxing its residents." Br. 15. It further asserts that California's methods of tax collection "amount to cross-state bank heists," which it believes violate its sovereignty. *Id.* Arizona alleges that taxation by California of Arizona-based companies has deprived Arizona of tax revenue, because Arizona offers a tax deduction to those companies based on their payment of taxes to other States. Proposed Complaint ¶ 134. "Extrapolating from" information allegedly provided by "[o]ne accounting firm" that employs approximately 0.6 percent of certified public accountants in the State, Arizona estimates that California's assessment and collection of the minimum franchise tax costs Arizona approximately $484,000 per year in lost tax revenue. *Id.* ¶ 63-65.

ARGUMENT

Arizona alleges that California has improperly sought to tax certain Arizona companies that lack a sufficient connection to California. That is not the sort of claim that may or should be pursued under this Court's original jurisdiction. Individual taxpayers may pursue any available claim at the administrative level and in the state courts in the first instance, with review by this Court through the ordinary certiorari process. Indeed, a number of taxpayers are currently pursuing claims in California comparable to the ones Arizona seeks to assert on behalf of Arizona companies, and there is no indication that ordinary judicial processes are inadequate to resolve them. Some of these taxpayers' claims may have merit; many others do not. It would be neither appropriate nor practicable to adjudicate, in an original jurisdiction action in this Court, what Arizona alleges to be thousands of individual taxpayers' refund claims. The motion for leave to file a bill of complaint should be denied.

1. This Court has long recognized that its authority to adjudicate original disputes between States is of a "delicate and grave [] character." *Louisiana v. Texas*, 176 U.S. 1, 15 (1900). Such suits ask the Court to exercise the "extraordinary" power "to control the conduct of one state at the suit of another." *New York v. New Jersey*, 256 U.S. 296, 309 (1921). They also burden the Court's resources, require it to assume the role of fact-finder, and constrain its ability to exercise its appellate jurisdiction to address questions of national importance arising in cases that have proceeded through the lower courts in the ordinary course. *See Ohio v. Wyandotte Chem. Corp.*, 401 U.S. 493, 498-499 (1971).

In light of these considerations, the Court has "said more than once that [its] original jurisdiction should be exercised only 'sparingly.'" *Mississippi v. Louisiana*, 506 U.S. 73, 76 (1992). The Court will entertain such suits "'only in appropriate cases,'" *id.*, such as where "the threatened injury is clearly shown to be of serious magnitude and imminent," *Alabama v. Arizona*, 291 U.S. 286, 292 (1934). Jurisdiction "will not be exerted in the absence of absolute necessity." *Id.* at 291.

In addition, the Court's original jurisdiction is appropriate only in cases in which a State's "sovereign or quasi-sovereign interests are implicated and it is not merely litigating as a volunteer the personal claims of its citizens." *Pennsylvania v. New Jersey*, 426 U.S. 660, 665 (1976) (per curiam). The "model case" for the use of this Court's original jurisdiction is an inter-State dispute "of such seriousness that it would amount to casus belli if the States were fully sovereign." *Mississippi*, 506 U.S. at 77 (internal quotation marks omitted); *see also North Dakota v. Minnesota*, 263 U.S. 365, 372-373 (1923).

In contrast, disputes between "'States and nonresidents … over the application of state laws concerning taxes, motor vehicles, decedents' estates, business torts, government contracts, and so forth'" generally are not suitable for the Court's original jurisdiction. *Arizona v. New Mexico*, 425 U.S. 794, 798 (1976) (per curiam) (quoting *Wyandotte Chem. Corp.*, 401 U.S. at 497). Given the frequency with which these disputes arise, "[i]t would, indeed, be anomalous were this Court to be held out as a potential principal forum for settling such controversies." *Id.*; *see also Pennsylvania*, 426 U.S. at 565-566.

The Court looks to two factors in determining whether an original suit is appropriate for its resolution. First, the Court examines "the nature of the interest of the complaining State, focusing on the 'seriousness and dignity of the claim.'" *Mississippi*, 506 U.S. at 77 (citation omitted). Second, the Court considers "the availability of an alternative forum in which the issue tendered can be resolved." *Id.* In applying these factors, the Court has "'substantial discretion to make case-by-case judgments'" about the "'practical necessity'" of its review. *Id.* at 76 (quoting *Texas v. New Mexico*, 462 U.S. 554, 570 (1983)).[8]

2. a. Plaintiffs' proposed bill of complaint fails to meet these standards. The Court most commonly exercises its original jurisdiction to hear actions that involve core sovereign interests, such as disputes over boundaries and the use of interstate lakes and rivers. *See* Stephen Shapiro et al., *Supreme Court Practice* 622 (10th ed. 2013). This case does not fit that pattern. It is a dispute between a State and a group of taxpayers who contend the State has sought to assess a tax against them in violation of the federal Constitution. The Court often does confront disputes of this

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[8] Arizona invites the Court to reconsider its discretionary approach to exercising jurisdiction over disputes between States. Ariz. Br. 36; *see also* Br. of Researchers et al. 5-7. This Court recently declined an identical invitation, *see Missouri v. California*, No. 148, Orig., Pltfs. Br. 13 n.1, and it should follow the same course here. None of the arguments advanced suggests the kind of "special justification" that would be required to disturb settled law. *See, e.g.*, *Dickerson v. United States*, 530 U.S. 428, 443 (2000). Indeed, this case well illustrates the sound reasons underlying the Court's discretionary approach. Were the rule otherwise, the Court would be asked to entertain all manner of cross-border disputes regarding matters of commerce, finance, and taxation.

kind—but in the ordinary course of exercising its appellate jurisdiction, not its original jurisdiction. *See, e.g.*, *N.C. Dep't of Revenue v. Kimberley Rice Kaestner 1992 Family Trust*, No. 18-457; *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2089 (2018); *Comptroller v. Wynne*, 135 S. Ct. 1787, 1793-1794 (2015).

Cases like these are not appropriate for the Court's original jurisdiction because they are pecuniary disputes regarding taxation of private parties, not "a substitute for the diplomatic settlement of controversies between sovereigns." *North Dakota*, 263 U.S. at 372-373. As the Court held in denying Pennsylvania leave to assert a claim against New Jersey for taxes levied on Pennsylvania residents, a lawsuit of this sort "represents nothing more than a collectivity of private suits" against the defendant State "for taxes [assessed against] private parties." *Pennsylvania*, 426 U.S. at 666. "[I]f, by the simple expedient of bringing an action in the name of a State, this Court's original jurisdiction could be invoked to resolve what are, after all, suits to redress private grievances, [its] docket would be inundated." *Id.* at 665; *see also Arizona*, 425 U.S. at 797-798.

Arizona's claims here are no different from Pennsylvania's claim in that case. Its contention that this garden-variety tax dispute implicates its sovereign interests is not persuasive.

First, Arizona asserts that California's exercise of its taxation authority amounts to "continual cross-border incursions" into Arizona's territory, though it concedes they are "low-grade." Br. 15; *see* Br. 17; *cf. Alabama*, 291 U.S. at 292 (requiring that the complaining State's injury be "of serious magnitude"). California has not made any "incursion" across the Colorado River into Arizona, low-grade or otherwise.

States routinely tax individuals and entities who reside outside their territory but engage in activity connected to the taxing State, such as by working there for part of the year or conducting business there. *See, e.g.*, *Wayfair*, 138 S. Ct. at 2087. This Court has never suggested that such taxation is analogous to an invasion of one State by another, even if a particular tax might ultimately be held to transgress constitutional limits. *See, e.g.*, *Quill Corp. v. North Dakota*, 504 U.S. 298, 317-318 (1992).

Second, Arizona contends that California has engaged in what it describes as "cross-state bank heists" that constitute "lawless seizures." Br. 15; *see* Br. 17. That hyperbole is not remotely an accurate description of how California collects unpaid taxes, *see infra* at 29-30, but in any event it does not amount to sovereign injury to Arizona. Arizona does not allege, nor could it, that California has seized any money *from Arizona*. That readily distinguishes this case from *Arkansas v. Delaware*, No. 146, Orig., 137 S. Ct. 535 (2016) (cited at Br. 16), which involves an allegation that Delaware has wrongfully escheated funds that federal law requires be paid to other States. Instead, Arizona's claim focuses on taxes collected from "private parties." *Pennsylvania*, 426 U.S. at 666.

Third, Arizona argues that California has "inflict[ed] proprietary harm to Arizona's treasury by converting otherwise-taxable income into a non-taxable deduction" in light of the deduction Arizona offers for taxes paid by in-state LLCs to other States. Br. 17. But that same circumstance is present in many, if not most, instances in which a State taxes an individual or entity residing in another State. This Court has rejected the theory that such deductions provide a basis for converting every interstate tax dispute into an

original jurisdiction action. That sort of injury is "self-inflicted, resulting from decisions by … state legislatures" to provide tax credits or deductions to their own residents. *Pennsylvania*, 426 U.S. at 664. "Nothing require[s]" Arizona to offer a tax deduction to in-state LLCs for taxes paid to other States, *id.*, and Arizona "has the unfettered right at any time to repeal its legislation," *Massachusetts v. Missouri*, 308 U.S. 1, 16-17 (1939) (denying Massachusetts leave to file bill of complaint premised on "the reciprocal provisions of the tax statutes of the two States"). "No State can be heard to complain about damage inflicted by its own hand." *Pennsylvania*, 426 U.S. at 664.

Fourth, Arizona asserts that California has deprived Arizona of its "'quasi-sovereign interest in not being discriminatorily denied its rightful status within the federal system.'" Br. 18 (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 607 (1982)). None of this Court's original-jurisdiction cases supports that theory of injury, which would be equally applicable in every case in which a State contends that a neighboring State has unlawfully taxed its residents. *Snapp*, the sole case Arizona cites in support of its theory (Br. 18), was not an original jurisdiction action. It involved a lawsuit in federal district court by Puerto Rico "in its capacity as *parens patriae*," alleging that private employers were violating a federal law offering certain protections to Puerto Rican workers. 458 U.S. at 594; *see id.* at 597-598.

Arizona does not describe its lawsuit as a *parens patriae* suit. That may be because the Court has held that "*[p]arens patriae* suit[s]" premised on state taxes assessed against private parties are not proper subjects for the Court's original jurisdiction, as "[n]o sovereign or quasi-sovereign interests … are implicated."

Pennsylvania, 426 U.S. at 666; *see also Arizona*, 425 U.S. at 796 (denying Arizona leave to file original jurisdiction suit "as *[p]arens patriae* [f]or its citizens" subject to New Mexico electricity tax). The same principle applies here.

Fifth, Arizona contends that California has injured its "'quasi-sovereign interest in the health and well-being—both physical and economic—of its residents'" by "seizing moneys that rightfully belong to Arizona residents … and violating their constitutional rights." Br. 18 (quoting *Snapp*, 458 U.S. at 607). That argument, relying upon the same inapposite case, is simply a repackaging of Arizona's other theories. It confirms that the real alleged injury here is to private parties, not to Arizona.[9]

The two original jurisdiction cases Arizona cites in support of its position (Br. 16) do not provide a basis for granting leave to file its bill of complaint here. In *Wyoming v. Oklahoma*, 502 U.S. 437 (1992), the Court allowed Wyoming to proceed with an original jurisdiction action challenging Oklahoma's regulatory preference for coal mined in Oklahoma in part because the law "directly affect[ed] Wyoming's ability to collect severance tax revenues" on coal mined in Wyoming. *Id.* at 451. The Court concluded that constituted a "direct injury" to Wyoming, rather than one affecting

[9] Arizona also asserts that California has engaged in what it describes as a "pattern of relentless encroachments" against other States, ostensibly manifested in three unrelated episodes involving a state tax audit, state regulation of eggs sold in California, and a state supreme court ruling in a personal jurisdiction case. Br. 18-20. Arizona's characterization is not accurate, but in any event, Arizona does not claim that it has suffered any harm as a result of these miscellaneous grievances, which have no relevance to this case.

only its "interest as *parens patriae*." *Id.* This case, which concerns an alleged indirect effect on Arizona tax revenue based on a deduction the State has chosen to offer for taxes paid to other States, is analogous to *Pennsylvania* and *Massachusetts*, *supra* at 14-15, not *Wyoming*.

Maryland v. Louisiana, 451 U.S. 725 (1981) (cited at Br. 16), is also inapposite. The Court allowed nine States and the United States to pursue a Commerce Clause challenge to a Louisiana law imposing a tax on natural gas produced in the Gulf of Mexico and imported into Louisiana. *Id.* at 728, 734. The Court noted that the plaintiff States themselves had suffered "direct harm," as "purchaser[s] of electricity," from the higher energy prices resulting from Louisiana's tax. *Id.* at 743. The Court contrasted that situation with the one in *Arizona*, where the court had denied leave to file a bill of complaint premised on taxes assessed against private companies that could pursue their own tax refund lawsuits. *Id.* This case is analogous in that respect to *Arizona*, *infra* at 18, not *Maryland*.[10]

b. Arizona likewise has not shown that there is no "alternative forum in which the issue tendered can be resolved." *Mississippi*, 506 U.S. at 77. There is an obvious alternative forum: Any entity that believes California has improperly assessed taxes against it, or has engaged in unlawful tax collection practices, may pursue a prepayment administrative appeal or a postpayment refund action in California courts (or both).

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[10] The *Maryland* Court also emphasized that the "exercise of [its] original jurisdiction" was "supported by the fact that the [Louisiana] [t]ax affect[ed] the United States' interests," 451 U.S. at 744, reflected in the federal government's intervention as a plaintiff, *id.* at 734. That factor was "totally absent in *Arizona v. New Mexico*," *id.* at 744, and is absent here as well.

Review in this Court would then be available through the Court's regular appellate jurisdiction. That is the ordinary manner in which this Court reviews claims of unconstitutional state taxation, *see supra* at 12-13, and there is no reason to believe it would be inadequate here. Indeed, to date two out-of-state entities have successfully challenged the Board's assessments of the minimum franchise tax, while other entities in different factual circumstances have had their claims denied. *See supra* at 5-8 & n.7 (discussing *Swart*, 7 Cal. App. 5th 497, and *Satview*, 2018 WL 6378072).

The Court emphasized this consideration in denying leave to file a bill of complaint in *Arizona*, 425 U.S. 794. There, Arizona sought to challenge a New Mexico law that imposed a tax on electricity generated in the State while providing a tax "credit … in the amount of the electrical energy tax paid for electricity consumed in New Mexico." *Id.* at 794. The Court noted that Arizona-based utilities had filed a lawsuit in New Mexico state court challenging the tax, and reasoned that this "state-court action provide[d] an appropriate forum in which the [i]ssues tendered here may be litigated." *Id.* at 797. The Court observed that if the New Mexico courts upheld the tax, the issue "may be brought to this Court" through its appellate jurisdiction. *Id.* That in fact happened, and this Court ultimately held that the New Mexico tax violated a federal statute. *Ariz. Pub. Serv. Co. v. Snead*, 441 U.S. 141, 146 (1979).

In the present case, Arizona once again seeks to invoke this Court's original jurisdiction to challenge a tax levied against private entities fully capable of litigating the same issue themselves. Once again, its motion for leave to file a bill of complaint should be denied.

Arizona's arguments to the contrary are unavailing. It first argues that it could not *itself* bring suit in any trial court challenging the California tax law at issue, in part because "Arizona has not paid any taxes directly to California." Br. 22. That argument only confirms that the proper avenue for any challenge here is a refund action involving one or more private parties actually subject to California's tax. The relevant question is not whether Arizona itself could bring a claim elsewhere, but whether there is an "alternative forum in which *the issue tendered* can be resolved." *Mississippi*, 506 U.S. at 77 (emphasis added).

Arizona offers "four reasons" why it believes "individual-company refund actions" would not "provide an adequate alternative forum." Br. 22. None is persuasive.

First, Arizona argues that "the low-dollar amount of the $800-tax is insufficient incentive for taxed entities to litigate these issues fully." Br. 22. Arizona cites nothing to support that assertion, and experience shows it is not true. The taxpayer in *Swart*, "a small family owned-corporation," 7 Cal. App. 5th at 501, found sufficient incentive to challenge the tax at issue. The same is true of two of the LLCs Arizona mentions in its proposed complaint, which it alleges are currently pursuing their own refund claims. Proposed Complaint ¶¶ 104, 115.

These entities may have found it worthwhile to pursue their tax refund claims in part because California law allows prevailing refund claimants to recover "reasonable litigation costs incurred," including attorney's fees. Cal. Rev. & Tax Code § 19717(a); *see also* Cal. Code Civ. Proc. § 1021.5; *Ventas I Fin., LLC v. Franchise Tax Bd.*, 165 Cal. App. 4th 1207, 1234-1235 (2008). In addition, LLCs may also pursue tax refund

actions on a classwide basis in certain circumstances, allowing them to share litigation costs. *See In re Franchise Tax Bd. LLC Tax Refund Cases*, 25 Cal. App. 5th 369, 374 (2018). That situation contrasts sharply with *Maryland* (cited at Br. 22), where the Court reasoned that "individual consumers" of natural gas could not be expected to pursue refund actions for the small additional monthly charges they might incur as a result of Louisiana's tax of "seven cents per thousand cubic feet of natural gas." 451 U.S. at 731, 739.

Second, Arizona contends that requiring LLCs to "subject themselves to the jurisdiction of California's courts" to pursue refund actions "impermissibly proliferates the constitutional violations." Br. 22. But out-of-state entities have often pursued constitutional challenges to state taxes in the courts of the taxing State. *See supra* at 12-13; *see also, e.g.*, *Quill*, 504 U.S. at 303; *Norfolk & W. Ry. Co. v. Mo. State Tax Comm'n*, 390 U.S. 317, 329-330 (1968); *Safe Deposit & Trust Co. of Balt. v. Virginia*, 280 U.S. 83, 93 (1929). Such claims have often been successful, and this Court has never suggested that litigation of that sort is unfair to the claimants. If a California entity found itself in a dispute with Arizona about Arizona taxes, it would have to litigate in Arizona. The prospect that business entities with interstate investments may have to submit themselves to the jurisdiction of an out-of-state court for the limited purpose of pursuing a tax refund action is not a convincing reason to allow States to invoke this Court's original jurisdiction to pursue their residents' private tax disputes.

Third, Arizona argues that "California and its Tax Board have proven remarkably—and incorrigibly—adept at evading meaningful relief from their own courts and agencies." Br. 22. Arizona's own factual

allegations belie that assertion. Where the law warrants it, California courts have not hesitated to rule against the Board in tax cases, including those involving out-of-state business entities. *See, e.g.*, *Franchise Tax Bd. LLC Tax Refund Cases*, 25 Cal. App. 5th at 375; *Swart*, 7 Cal. App. 5th at 500; *Ventas*, 165 Cal. App. 4th at 1212; *Nw. Energetic Servs., LLC v. Cal. Franchise Tax Bd.*, 159 Cal. App. 4th 841, 861 (2008). The State faithfully follows those decisions. And this Court has recognized that "California's refund procedures constitute a plain, speedy, and efficient remedy" for purposes of the Tax Injunction Act. *Franchise Tax Bd. v. Alcan Aluminum Ltd.*, 493 U.S. 331, 338 (1990).

Arizona complains that the Board has adopted a narrow interpretation of the California Court of Appeal's recent *Swart* decision. Br. 23. But California courts, not the Board, will ultimately determine as a matter of state law how the principles discussed in *Swart* apply in other factual circumstances. As Arizona notes, several taxpayers have challenged the Board's interpretation in other proceedings, including one (*Satview*) in which the Office of Tax Appeals issued a decision less than one year ago ruling against the Board. Proposed Complaint ¶ 48. In other cases, taxpayers have not prevailed at the administrative level, but could continue to pursue their claims in court. *See supra* at 3-4, 7 & n.7. It would be premature, to say the least, to resort to this Court's original jurisdiction to circumvent a process that is currently playing out in an orderly fashion in California at the administrative level and in the state courts. If and when those courts uphold the Board's taxation of an out-of-state entity in the face of any challenge based

on federal law, *see, e.g.*, *Bunzl*, 27 Cal. App. 5th at 997-999, the taxpayer may seek review in this Court.[11]

Fourth, Arizona maintains that private-party refund actions would be "unavailable to Arizona itself" and private parties could not "adequately assert … Arizona's sovereign and quasi-sovereign interests." Br. 23. That is irrelevant. As already discussed, the question is whether private-party actions would provide a forum for review of the issue tendered, not whether Arizona itself could bring a claim. *Supra* at 19; *see Mississippi*, 506 U.S. at 77. Moreover, Arizona itself has suffered no direct injury, nor any injury at all apart from the financial harm it seeks to assert on behalf of its residents. *Supra* at 13-16.

3. Arizona's motion should also be denied because its claims could not practicably be resolved in aggregate form in an original jurisdiction action. *See Wyandotte Chem. Corp.*, 401 U.S. at 498-499. Any potential merit of specific claims depends on the individual circumstances of particular taxpayers. And to the extent an aggregate-level merits inquiry is possible, Arizona's claims fail.

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[11] Arizona faults California for its supposed "recalcitrance" in having not more rapidly extended a 1996 administrative ruling regarding the tax treatment of out-of-state limited partners to the separate context of LLCs. Br. 23; *see id.* at 6-7. As discussed, however, LLCs resemble partnerships in some respects but not others; the Board determined that general partnerships were a more apt analogue. *Supra* at 4-5. That issue was litigated in *Swart*, and the court rejected the Board's position on the facts of that case. 7 Cal. App. 5th at 503. That reflects ordinary legal processes, not any improper conduct on California's part. Arizona also complains the Board has not adjusted its position in light of the Office of Tax Appeals' adverse decision in *Satview* (Br. 23), but that opinion was designated as non-precedential, and the Board has prevailed in other cases. *Supra* at 7-8.

a. Arizona first contends that California's taxation of "companies whose only connection to California is passive investment in LLCs organized under California law or otherwise doing business there" violates due process. Br. 25; *see id.* at 24-26. As that formulation suggests, the due process inquiry necessarily focuses on the particular circumstances of each taxpayer. It entails questions such as: How "active" or "passive" is the investment? How substantial an interest in the California LLC does the out-of-state entity have? What other connections does the out-of-state entity have to California? Due process requires "some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax." *Wayfair*, 138 S. Ct. at 2093. That an Arizona-based entity may lack a physical presence in California does not establish that California's taxation of that entity violates due process. *Id.*

Arizona relies upon this Court's personal-jurisdiction holding in *Shaffer v. Heitner*, 433 U.S. 186 (1977) (Br. 24-25), but that case confirms that the inquiry is an individualized and highly contextual one. The Court there held that Delaware could not exercise personal jurisdiction over corporate directors or officers based "solely" on their ownership of stock in a company incorporated in Delaware. 433 U.S. at 213. Instead, Delaware's exercise of jurisdiction had to be "evaluated according to the standards set forth in [*International Shoe Co. v. Washington*, 326 U.S. 310 (1945)] and its progeny." *Shaffer*, 433 U.S. at 212. Those standards eschew "[m]echanical or quantitative evaluations of the defendant's activities" and focus on "the relationship among the defendant, the forum, and the litigation." *Id.* at 204; *see Walden v. Fiore*, 571 U.S. 277, 283 (2014).

That inquiry turns on facts specific to each Arizona entity subject to California's "doing business" tax. Here, for instance, Arizona alleges that California has improperly sought to tax Guardian Eagle, an Arizona LLC, based on its "2.5% ownership interest in Innutra," an LLC doing business in California. Proposed Complaint ¶¶ 105-106; *see id.* ¶¶ 67-69. Arizona alleges that Guardian Eagle "plays no role in the management of Innutra and has no ability to appoint or replace its manager." *Id.* ¶ 107. Yet California tax records indicate that an individual describing himself as Innutra's "manager" and "managing member" signed Innutra's California tax returns; Arizona Corporation Commission records show that this same individual signed the articles of organization of both Guardian Eagle and Innutra. The extent to which Guardian Eagle, through that individual or otherwise, plays a role in directing the affairs of Innutra would be relevant in determining whether California's taxation of Guardian Eagle transgresses constitutional limitations.[12] The extent of Guardian Eagle's other connections to California would also be relevant.

Even if Arizona were able to establish through discovery and at trial that each of the five LLCs mentioned in its complaint lacks the requisite minimum connections to California to be subject to tax in the State (which is far from clear), the Court would be hard-pressed to announce any clear rule to apply in

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[12] California offers this example solely as an illustration of the type of inquiry that would be necessary to determine whether the minimum franchise tax may constitutionally be assessed against a particular taxpayer. Arizona's motion for leave to file a bill of complaint should be denied regardless of whether this or any of the factual allegations in Arizona's proposed complaint regarding particular taxpayers is true.

other cases. One Arizona business might own a 15 percent interest in a California LLC; another might own a 45 percent interest and have significant influence, but not complete control, over high-level business decisions of the California LLC. *See supra* at 7-8 & n.7 (collecting administrative appeals involving LLCs in a variety of factual circumstances); *cf. Swart*, 7 Cal. App. 5th at 509-513. Still another Arizona business might own 100 percent of a California LLC and exercise complete control over its operations. *Cf. Bunzl*, 27 Cal. App. 5th at 997-998 (upholding the State's exercise of the taxing power in that situation). This Court's original jurisdiction would not be well suited to the task of determining whether California's taxation of out-of-state business entities might violate due process in these disparate circumstances.

That problem is especially acute because the relief Arizona seeks sweeps far more broadly than the five LLCs mentioned in its proposed complaint. Arizona seeks injunctive relief and refunds on behalf of "all Arizona businesses" that lack the minimum contacts necessary for California to tax them. Proposed Complaint at 41; *see id.* ¶ 3. It is doubtful whether Arizona has standing to pursue such claims, *see Pennsylvania*, 426 U.S. at 665, but even if it does, this Court's original jurisdiction would not be an efficient way to resolve them. Arizona "estimate[s]," based on an "[e]xtrapolati[on]" from the records of one accounting firm, that there are more than 13,000 such entities. Proposed Complaint ¶ 65. The Court should decline Arizona's invitation to wade through the corporate records and individual circumstances of thousands of business to determine which of them might be entitled to a state tax refund.

b. Arizona's dormant Commerce Clause claim likewise could not practicably be adjudicated in an original jurisdiction action. In general, "[t]he Court's Commerce Clause jurisprudence has 'eschewed formalism for a sensitive, case-by-case analysis of purposes and effects.'" *Wayfair*, 138 S. Ct. at 2094. And to the extent an aggregate-level merits inquiry would be possible, this Court's decision in *American Trucking Ass'ns v. Michigan Public Service Commission*, 545 U.S. 429 (2005), all but forecloses Arizona's dormant Commerce Clause claim.

In *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), the Court articulated a four-part test to determine whether a State's exercise of its taxing power violates the Commerce Clause. That test asks whether "the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." *Id.* at 279; *see* Ariz. Br. 26.

The "nexus requirement is 'closely related' to the due process requirement" described above. *Wayfair*, 138 S. Ct. at 2093 (citation omitted). For the reasons already discussed, that inquiry requires an assessment of the particular circumstances of each taxpayer. The same is true of the fair relationship requirement, which is also "closely connected" to the nexus requirement. *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 625-626 (1981).

Arizona relies primarily upon *American Trucking Ass'ns v. Scheiner*, 483 U.S. 266 (1987), in support of its arguments that California's tax is not fairly apportioned and discriminates against interstate commerce. Br. 28-30. But as Arizona acknowledges, *Scheiner* in-

volved Pennsylvania's "flat tax on *physical commercial entrance* into a state." Br. 29 (emphasis added); *see Schneier*, 483 U.S. at 284 ("If each State imposed flat taxes for the privilege of making commercial entrances into its territory, there is no conceivable doubt that commerce among the States would be deterred."). The Pennsylvania tax thus affected not only local transportation, but also "trucks that merely crossed Pennsylvania's borders to transport, say, Ohio goods to New Jersey customers," burdening interstate commerce. *Mich. Pub. Serv. Comm'n*, 545 U.S. at 437 (distinguishing *Scheiner* on this ground).

California's minimum franchise tax is not a tax on interstate business activity or crossing state lines in interstate commerce. Rather, it applies to all LLCs who engage in sufficient activity in California to be deemed to be doing business in the State. It is thus analogous to the tax at issue in *Michigan Public Service Commission*. There, the Court unanimously upheld a "flat $100 fee that Michigan charges trucks engaging in intrastate commercial hauling." 545 U.S. at 431. The Court observed that "States impose numerous flat fees upon local businesses and service providers," and that "[n]othing in our case law suggests that … a neutral, locally focused fee or tax," even a flat fee or tax, "is inconsistent with the dormant Commerce Clause." *Id.* at 434.

The petitioners in *Michigan Public Service Commission*, relying on *Scheiner*, raised the same arguments Arizona does here, and the Court rejected them. For instance, the petitioners argued that if every State imposed the same fee, the effect would be to deter interstate commercial activity, 545 U.S. at 437-438; *compare* Ariz. Br. 28. The Court agreed that "if all

States" imposed a similar flat tax, a business operating in many States "would have to pay fees totaling several hundred dollars, or even several thousand dollars." 545 U.S. at 438. But the Court deemed that insufficient to establish a violation of the Commerce Clause. It reasoned that an interstate business would have to pay such fees "only because it engages in *local* business in all those States," and "[a]n interstate firm with local outlets normally expects to pay local fees that are uniformly assessed upon all those who engage in local business, interstate and domestic firms alike." *Id.* The same is true here.

The Court also rejected petitioners' arguments, which Arizona again echoes, that Michigan's tax "impose[d] [a] significant practical burden upon interstate trade" and "unfairly discriminate[d] against interstate truckers." 545 U.S. at 434-435; *compare* Ariz. Br. 29-30. The Court held that the petitioners were obligated to "empirically … demonstrate the existence of a burdensome or discriminatory impact" upon interstate commerce, 545 U.S. at 436, and that no evidence in the record established any such impact, *id.* at 434-436. Here, Arizona similarly cites no study or empirical data suggesting that the minimum franchise tax burdens interstate commerce or discriminates against out-of-state entities. On the contrary, Arizona acknowledges the "low-dollar amount" of the tax, Br. 22, and estimates that there are more than 13,000 LLCs based in Arizona alone with ownership stakes in California LLCs, *see* Proposed Complaint ¶ 65. Those considerations strongly suggest that any burden on interstate investment is minimal.

At any rate, that empirical question would be better resolved in the first instance in ordinary trial court

litigation, not through the exercise of this Court's original jurisdiction. In both *Scheiner* and *Michigan Public Service Commission*, the factual records developed in the lower courts proved relevant to this Court's resolution of the constitutional questions presented. *See Scheiner*, 483 U.S. at 276, 286 & nn.9-10; *Mich. Pub. Serv. Comm'n*, 545 U.S. at 434-436. The same would be true here.

c. Arizona's contention that California's collection of taxes from taxpayers' banks violates the Due Process Clause (Br. 32-33) also would be poorly suited to adjudication in an original jurisdiction action. Moreover, this argument rests upon a mischaracterization of the manner in which California collects taxes.

First, Arizona argues that California "lacks personal jurisdiction over [] out-of-state funds and therefore cannot lawfully effectuate a seizure of them." Br. 32. But that argument, no less than Arizona's personal jurisdiction argument with respect to the assessment of the tax, depends upon the individual circumstances of each taxpayer. *Supra* at 23-25. Only in a concrete factual setting is it possible to determine whether any particular instance of tax collection might violate due process.

Arizona's proposed complaint illustrates the point. Arizona fails to allege any actual "seizure" by California; that is not how California collects taxes. Rather, as Arizona acknowledges elsewhere, California generally collects unpaid taxes through voluntary "compliance by the banks." Br. 15. All of the alleged collections from Arizona taxpayers described in Arizona's proposed complaint were accomplished through voluntary compliance either by the taxpayer or by the

taxpayer's bank. *See* ¶¶ 67, 83-84, 99, 109. The circumstances of that compliance would be relevant to any potential due process claim.

Second, Arizona challenges the process by which California collects unpaid taxes from taxpayers' banks, asserting that it amounts to "coercive browbeating" of those banks. Br. 33. That is not accurate. Financial institutions routinely cooperate with federal and state tax investigations and tax collection of their own volition. There is nothing unusual or facially unlawful about that approach. To the extent a taxpayer seeks to challenge it, that claim too would require an analysis of the relevant factual circumstances surrounding the withholding request and the bank's compliance.

Arizona also cites California Revenue & Taxation Code Section 18674(a), which requires banks to comply with withholding notices "without resort to any legal or equitable action in a court of law or equity." Br. 33. But Section 18674(a) also provides that any bank or other entity that complies with a withholding notice "is not liable therefor" to the taxpayer, assuaging any concern a bank may have about compliance.

The purpose of this statutory structure is to ensure that a postpayment refund action by the taxpayer remains the exclusive means for challenging a tax. *See* Cal. Const., art. XIII, § 32. Many States, including Arizona, likewise make a postpayment refund action the exclusive means for challenging a tax, as does the United States. *See, e.g.*, *State ex rel. Lane v. Superior Court*, 72 Ariz. 388, 391 (1951) ("The legislature has seen fit to prescribe the method by which the validity of tax measures may be tested, i. e.: By paying the tax, and bringing suit to recover it. No other means have been provided."); Ariz. Rev. Stat. § 42-11006 (state tax

injunction act); *California v. Grace Brethren Church*, 457 U.S. 393, 412 (1982) (noting that "refunds [are] the exclusive remedy in many state tax systems"); 26 U.S.C. § 7421(a) ("[N]o suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.").

To the extent any taxpayer believes that this widespread and well-established practice violates due process, such a claim could also be brought in ordinary litigation in a trial court. It is highly doubtful, however, that it would have any merit. *See, e.g.*, *Clement Nat'l Bank v. Vermont*, 231 U.S. 120, 140 (1913) ("It cannot be doubted that the property being taxable, the state could provide, in order to secure the collection of a valid tax … for garnishment or trustee process against the bank, or in effect constitute the bank its agent to collect the tax from the individual depositors.").

d. Finally, Arizona argues that California's method of tax collection violates the Fourth Amendment. Br. 33-36. The Court should not exercise its original jurisdiction to hear that claim either.

At the outset, Arizona lacks standing to raise any Fourth Amendment claim on behalf of its residents. "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." *Rakas v. Illinois*, 439 U.S. 128, 133-134 (1978). Because Arizona does not allege that any of *its* property has been unlawfully seized, it cannot pursue any Fourth Amendment claim.

In addition, as with a due process claim arising from California's method of tax collection, a Fourth

Amendment claim arising in that context may be brought by an individual taxpayer in a refund action. Resolution of the claim would entail an analysis of the particular circumstances of the tax collection at issue. A bank's voluntary withholding of funds in response to a withholding notice likely would preclude a finding of any Fourth Amendment violation. "The Fourth Amendment proscribes unreasonable searches and seizures; it does not proscribe voluntary cooperation." *Florida v. Bostick*, 501 U.S. 429, 439 (1991).

Even if Arizona had alleged that California had actually seized bank assets, any such seizure would comport with the Fourth Amendment so long as it was supported by probable cause and did not "involve[] [any] intrusion into the privacy of [the taxpayers'] offices." *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 351-352 (1977); *see also id.* at 347 (IRS agents seized bank account to satisfy unpaid tax debt); *Lojeski v. Boandl*, 788 F.2d 196, 199-200 (3d Cir. 1986) (following *G.M. Leasing* and rejecting Fourth Amendment claim in similar circumstances). That inquiry, too, would require an analysis of the particular circumstances of individual taxpayers. It could not practicably be conducted in an original action in this Court.

CONCLUSION

The motion for leave to file a bill of complaint should be denied.

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
EDWARD C. DUMONT
Solicitor General
DIANE S. SHAW
Senior Assistant Attorney General
JOSHUA PATASHNIK
Deputy Solicitor General
CRAIG D. RUST
Deputy Attorney General

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