

Expedited Challenges to Unconstitutional State Taxes

by Jeffrey A. Friedman, Charles C. Kearns, and Charles C. Capouet

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Jeffrey A. Friedman



Charles C. Kearns



Charles C. Capouet

Jeffrey A. Friedman and Charles C. Kearns are partners and Charles C. Capouet is counsel at Eversheds Sutherland (US) LLP in Washington.

In this installment of A Pinch of SALT, the authors examine how challenges to state taxes can take years because of lengthy administrative requirements and how a declaratory judgment can offer expedited resolution.

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Determining the legality of a state tax can take years. During this time, taxpayers must make difficult decisions as to whether to comply with an allegedly illegal tax. States, meanwhile, face the prospect of refunding years' worth of a tax that is ultimately determined to be illegal. Surely an expedited resolution of a challenge to a state's tax is in everyone's interest.

A significant barrier to an expedited resolution of a challenged tax relates to the amount of time it takes to complete a state's administrative process. Often referred to as exhausting administrative remedies, typically taxpayers must either challenge the denial of a refund claim or await an assessment that leads to a protest. A denied refund claim or rejected protest of an assessment often triggers additional administrative steps — such as administrative hearings.

There is a solution — a declaratory judgment. This procedure allows courts "to declare rights, status, and other legal relations whether or not further relief is or could be claimed."¹ When a person's rights are affected by a statute, the declaratory judgment may determine "any question of construction or validity arising under the . . . statute."²

A declaratory judgment "allows parties who are uncertain as to their rights and duties, to ask a final ruling from the court as to the legal effect of an act before they have progressed with it to the point where any one has been injured."³ Declaratory judgments also "enable the citizen to procure from a court guidance which will keep him out of trouble and to procure that guidance

¹"An Act Concerning Declaratory Judgments and Decrees and to Make Uniform the Law Relating Thereto," section 1. This model legislation, known as the Uniform Declaratory Judgments Act, was drafted by the National Conference of Commissioners on Uniform State Laws in 1922.

²*Id.* at section 2. See also Edwin Borchard, *Declaratory Judgments* 766 (1941):

Possibly no form of written instrument is more susceptible of construction and interpretation by declaratory judgment than statutes. Nor, where constitutionality may be raised, is there more necessity for simplicity of adjudication for the individual and the community who must know at the earliest opportunity whether they are living under constitutional or unconstitutional laws, for delay may bring uncertainty and difficulties of all kinds.

³"The Uniform Declaratory Judgments Act: Reasons for Its Adoption," at 3 (prefatory language to the 1922 Uniform Declaratory Judgments Act).

with materially less expense than he would have to incur if he should wait until the trouble came before having recourse to the court.”⁴

Plaintiffs have used declaratory judgment actions to test various types of statutes, including those related to the power to exact fees and charges; hold elections; designate public roads in certain places; and refuse the issuance of a permit.⁵

At least 30 states have allowed taxpayers at various junctures to pursue declaratory judgments to challenge state tax laws.⁶ States that do not allow declaratory judgments in tax cases often allow them for other purposes.⁷ The federal Tax Injunction Act bars taxpayers from pursuing declaratory judgment actions challenging state

taxes at federal district court.⁸ Federal law generally bars taxpayers from challenging federal taxes via declaratory judgment actions.⁹

States should consider expanding the availability of declaratory judgments. In 2023 the Maryland Supreme Court held that declaratory judgments are not available to challenge the constitutionality of Maryland tax laws, even before administrative remedies have become available.¹⁰ But the court acknowledged that the Maryland General Assembly has “discretion to decide whether to require taxpayers to exhaust their administrative remedies,” including “the authority to permit early court challenges to new and innovative tax regimes as a way of minimizing uncertainty and disruption in the event a tax is found to be unconstitutional.”¹¹ Maryland’s Legislature — and those of other states — should seize the opportunity to authorize a declaratory judgment in tax cases.

Background: The ‘Exhausting’ Process of Challenging a State Tax

The typical methods to challenge state tax actions are to:

- await the commencement of an audit (which may take three or more years from the filing of a tax return), await the completion of an audit (which can take anywhere from one to 10 years), protest the audit assessment, and, finally, await the denial of the protest of the assessment; or
- file a refund claim, await the commencement of an audit of the refund claim (which may take three or more years), and await the denial of the refund claim (which can take anywhere from one to 10 years).

Only after the taxpayer proceeds through one of the administrative paths may it file in court. For example, in *Comptroller of the Treasury of Maryland*

⁴*Id.* at 4.

⁵Borchard, *supra* note 2, at 766, 796-797.

⁶See, e.g., *Royal Selections Inc. v. Florida Department of Revenue*, 687 So. 2d 893 (Fla. Dist. Ct. App. 1997); *City of Atlanta v. Hotels.com LP*, 674 S.E.2d 898 (Ga. 2009); *Crane Creek Country Club v. State Tax Commission*, 790 P.2d 366 (Idaho 1990); *Tri-State Coach Lines Inc. v. Metropolitan Pier and Exposition Authority*, 732 N.E.2d 1137 (Ill. Ct. App. 2000); *Kentucky v. AT&T Corp.*, 462 S.W.3d 399 (Ky. 2015); *Stockler v. Michigan Department of Treasury*, 255 N.W.2d 718 (Mich. Ct. App. 1977); *Baertsch v. Minnesota Department of Revenue*, 518 N.W.2d 21 (Minn. 1994); *Commonwealth Brands Inc. v. Morgan*, 110 So. 3d 752 (Miss. 2013); *Akin v. Director of Revenue*, 934 S.W.2d 295 (Mo. 1996) (en banc); *Jones v. State*, 532 N.W.2d 636 (Neb. 1995); *Malecon Tobacco LLC v. Department of Taxation*, 59 P.3d 474 (Nev. 2002); *Pheasant Lane Realty Trustee v. City of Nashua*, 720 A.2d 73 (N.H. 1998); *Labor Ready Northeast Inc. v. Director, Division of Taxation*, 25 N.J. Tax 607 (2011); *Amazon.com LLC v. N.Y. Department of Taxation and Finance*, 81 A.D.3d 183 (N.Y. App. Div. 2010); *Okl. Stat. tit. 68*, sections 226, 227.1; *Parsons v. Pennsylvania Department of Revenue*, 555 Pa. 200 (1999); *Narragansett Electric Co. v. Minardi*, 21 A.3d 274 (R.I. 2011); *S.C. Code Ann. section 12-60-80*; *Dakota Systems Inc. v. Viken*, 694 N.W.2d 23 (S.D. 2005); *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827 (Tenn. 2008); *Nebeker v. State Tax Commissioner*, 34 P.3d 180 (Utah 2001); *Sifferman v. Chelan County*, 496 P.3d 329 (Wash. Ct. App. 2021).

⁷See, e.g., *Hanjy v. Arvest Bank*, 94 F. Supp. 3d 1012, 1031 (E.D. Ark. 2015).

Arkansas’s and Missouri’s declaratory judgment acts both allow for a determination of the validity of a written contract and a declaration of a person’s rights, status, or other legal relations under a contract. See Ark. Code Ann. section 16-111-104; Mo. Ann. Stat. section 527.020. Accordingly, this Court agrees that plaintiffs are entitled to seek declaratory relief that the contracts at issue, or portions thereof, are unconscionable.

See also Netflix Inc. v. City of Fishers, 212 N.E.3d 188, 190 (Ind. Ct. App. 2023) (“We conclude that the trial court correctly determined that it has authority to hear the case pursuant to the Indiana Declaratory Judgment Act.”); *Burlington School District v. Provost*, 224 A.3d 841, 846 (Vt. 2019) (“We conclude that the District’s complaint for declaratory relief pled sufficient allegations to support the court’s exercise of its authority to provide relief under the” Declaratory Judgment Act.).

⁸28 U.S.C. section 1341. *See also California v. Grace Brethren Church*, 457 U.S. 393, 408 (1982) (“Although this Court once reserved the question, we now conclude that the [Tax Injunction] Act also prohibits a district court from issuing a declaratory judgment holding state tax laws unconstitutional.”).

⁹28 U.S.C. section 2201(a).

¹⁰*Comptroller of Maryland v. Comcast*, 484 Md. 222 (2023).

¹¹*Id.* at 245, n.8.

v. Wynne, litigation began with the comptroller auditing the Wynnes' 2006 Maryland income tax return.¹² The Wynnes did not receive decisions from Maryland's highest court and the U.S. Supreme Court until 2013¹³ and 2015,¹⁴ respectively.

Perhaps the most egregious delay in resolving a tax matter is the decadeslong saga involving Alabama's franchise tax, which the U.S. Supreme Court declared violated the commerce clause in its 1999 *South Central Bell Telephone Co.* decision.¹⁵ Refund claims for the tax were first filed in 1986 but were mired in the state court system until the late-2000s to mid-2010s, often resulting in limited taxpayer relief.¹⁶

In contrast, declaratory judgment actions are resolved much faster. For example, in *Washington Bankers Association*, a declaratory judgment action challenging a higher Washington business and occupation tax rate on large financial institutions was decided by the Washington Supreme Court within two years of the filing of the complaint for declaratory relief.¹⁷

The justification for requiring taxpayers to exhaust administrative remedies is to avoid premature litigation and allow the administrative agency (for example, a state's department of

revenue) to "retain the opportunity and autonomy to correct their own errors."¹⁸

However, first appealing to an administrative forum makes less sense in cases in which taxpayers seek a judgment on the legality of a new state tax. There is little to no benefit afforded by an administrative exhaustion process associated with an alleged facially illegal tax.

States That Allow Declaratory Judgments in Tax Litigation

Multiple state courts interpret their states' laws to allow taxpayers to file declaratory judgment actions challenging the legality of state tax laws, without being expressly permitted by statute. These declaratory judgment actions typically are permitted in limited situations, such as (1) limiting a declaratory judgment action to facial constitutional challenges and (2) barring a declaratory judgment action in cases that require significant fact-finding.

New York state and New York City provide good examples because they allow taxpayers to bring declaratory judgment actions challenging tax statutes in limited circumstances, including when a tax statute is (1) alleged to be unconstitutional or (2) challenged as "wholly inapplicable."¹⁹ For either basis to apply, there must be no "factual issue . . . raised" concerning the subject matter of the tax dispute.²⁰

When a taxpayer challenges a statute as being wholly inapplicable, the taxpayer must "allege that the agency had no jurisdiction over it or the matter that was taxed."²¹ The New York Supreme Court, Appellate Division, recently held that a declaratory judgment is available in *Site Safety LLC*.²² In that case, taxpayers sought a declaratory judgment that New York sales tax does not apply to site safety services. The court concluded that this exception to exhaustion applied because the complaint alleged that the New York State Department of Taxation and Finance lacked

¹² *Comptroller of Treasury of Maryland v. Wynne*, 575 U.S. 542 (2015).

¹³ *Maryland State Comptroller of Treasury v. Wynne*, 64 A.3d 453 (Md. 2013).

¹⁴ *Wynne*, 575 U.S. 542.

¹⁵ *South Central Bell Telephone Co. v. Alabama*, 526 U.S. 160 (1999). For context, Alabama taxpayers sought refunds of the franchise tax as early as 1986 on the grounds the tax unconstitutionally discriminated against interstate commerce because it applied a broader tax base to out-of-state corporations than in-state corporations. In 1989 the Alabama Supreme Court rejected the taxpayers' arguments in the lead case, *White v. Reynolds Metals Co.*, 558 So. 2d 373 (Ala. 1989). While Reynolds Metals was pending in state court, other taxpayers, including South Central Bell, filed similar refund claims. See *South Central Bell*, 526 U.S. 160. After another decade of navigating the Alabama tax appeals system, South Central Bell ultimately prevailed on the merits at the U.S. Supreme Court in 1999. *Id.* However, the Court later remanded *South Central Bell* to the Alabama Supreme Court to fashion a remedy for the taxpayer. *South Central Bell Telephone Co. v. State Department of Revenue*, 789 So. 2d 147 (Ala. 2000). While *South Central Bell* was on remand after the Court's 1999 decision, other out-of-state franchise taxpayers filed refund claims with the Alabama Department of Revenue that were summarily denied at the administrative level, thereby requiring the taxpayers to proceed through the state's refund appeals process. See *Ex parte Surtees*, 6 So. 3d 1157 (Ala. 2008).

¹⁶ E.g., *Lockheed Martin Corp. v. State Department of Revenue*, 210 So. 3d 1123 (Ala. Civ. App. 2016).

¹⁷ See *Washington Bankers Association v. Washington Department of Revenue*, 495 P.3d 808 (Wash. 2021) (en banc).

¹⁸ *State Board of Tax Commissioners v. Montgomery*, 730 N.E.2d 680, 684 (Ind. 2000).

¹⁹ *Site Safety LLC v. New York State Department of Taxation and Finance*, 237 A.D.3d 1395, 1397 (N.Y. App. Div. 2025).

²⁰ *Id.* at 1397.

²¹ *Id.*

²² *Id.*

“jurisdiction” on the basis that the sales tax does not apply to their site safety services. Further, there were no factual disputes because the taxpayer challenged the tax’s application to its undisputed site safety services “as specifically defined in the New York City Building Code.”²³ Because the plaintiffs sought a declaratory judgment regarding only those specifically defined services, it was not necessary for the plaintiffs to “set forth in detail the scope of the services they provide.”²⁴

The Wyoming Supreme Court has also allowed a declaratory judgment action to challenge the sales and use taxes imposed on construction materials.²⁵ A plaintiff hospital asserted that its “tax-exempt status precluded such a tax on property purchased for its own use.”²⁶ The court held that although a plaintiff “cannot obtain full review of agency action” via a declaratory judgment, it may instead “seek a declaratory judgment to challenge the validity or construction of administrative regulations, or the construction or constitutionality of a statute on which agency action is based.”²⁷ The court found that the failure to exhaust administrative remedies did not prohibit the filing of a declaratory judgment action because the plaintiff’s complaint “clearly questioned the constitutionality” of imposing Wyoming sales and use tax on contractors who supplied materials and performed work on them for a hospital.²⁸

New Jersey also allows taxpayers to sue for declaratory relief in tax cases but narrowly limits which taxpayers may pursue their claims. In *Labor Ready Northeast*,²⁹ the New Jersey Tax Court allowed a declaratory judgment action to

challenge a notice from the New Jersey Division of Taxation that the taxpayer’s temporary labor services activities would be subject to sales tax.³⁰ The court explained that New Jersey’s “strong policy in favor of exhaustion of administrative remedies applies” to requests for declaratory judgment.³¹ But the court concluded that declaratory relief was available because “in the absence of an assessment or final determination of tax by the Director, there is no available meaningful administrative remedy” to challenge the legality of the notice.³²

States That Disallow Declaratory Judgments in Tax Litigation

Despite the efficiency and other benefits of declaratory judgments, some states do not allow them to challenge a state tax.

The Arkansas Court of Appeals requires plaintiffs to exhaust administrative remedies, regardless of whether the plaintiff challenged a statute on a constitutional basis.³³ Although the Arkansas Administrative Procedure Act “provides for petitions for declaratory judgment in circuit court concerning the validity of agency rules or their application that threaten to injure the petitioner,”³⁴ the court concluded that “it is clear that the exhaustion-of-administrative-remedies doctrine applies even when statutes are challenged as unconstitutional.”³⁵

Similarly, Vermont also barred declaratory judgment actions challenging local taxes. Vermont towns and individual taxpayers filed a superior court lawsuit challenging the assessment methods used to calculate the equalized education property tax grand list.³⁶ The plaintiffs alleged numerous state and federal constitutional violations and statutory violations. The Vermont Supreme Court held that the plaintiffs were required to first exhaust administrative remedies,

²³ *Id.* at 1398.

²⁴ *Id.*

²⁵ *Memorial Hospital of Laramie County v. Department of Revenue and Taxation of the State of Wyoming*, 770 P.2d 223 (Wyo. 1989).

²⁶ *Id.* at 225.

²⁷ *Id.* at 225-226.

²⁸ *Id.* at 226. The Wyoming Supreme Court would have dismissed the case for failure to exhaust administrative remedies “had the case required a determination of whether particular contractors fell within that taxable class.” *Id.* This determination was not necessary because “the parties stipulated that some contractors indeed installed materials that they had supplied to the hospital.” *Id.*

²⁹ *Labor Ready Northeast*, 25 N.J. Tax 607 (2011).

³⁰ *Id.* at 609-610.

³¹ *Id.* at 618 (quoting *Roadway Express Inc. v. Kingsley*, 37 N.J. 136, 139 (1962)).

³² *Id.* at 618.

³³ *McLane Southern Inc. v. Davis*, 80 Ark. App. 30 (2002).

³⁴ *Id.* at 38 (citing Ark. Code Ann. section 25-15-207).

³⁵ *Id.*

³⁶ *Town of Bridgewater v. Vermont Department of Taxes*, 787 A.2d 1234 (Vt. 2001).

even though the plaintiffs contended that they could not "get the requested relief through the administrative process [and] it serves no purpose to follow a procedure designed to challenge individual assessments."³⁷ Plaintiffs further argued that exhaustion is not required when a constitutional challenge has been raised because "the administrative decision makers do not have the authority to strike down the valuation methods as unconstitutional."³⁸ The court required the plaintiffs to exhaust administrative remedies nonetheless to complete fact-finding, even though the administrative agency had no power to rule on the underlying dispute.

In addition, in *State Board of Tax Commissioners v. Montgomery*,³⁹ the Indiana Supreme Court held that taxpayers were not permitted to sue for declaratory judgment at the Indiana Tax Court regarding whether the state's Health Care for the Indigent program — which included a countywide property tax — violated the Indiana Constitution. The court found it unavailing that the taxpayers challenged the statute's constitutionality without first exhausting administrative remedies:

Even if the ground of complaint is the unconstitutionality of the statute, which may be beyond the agency's power to resolve, exhaustion may still be required because "administrative action may resolve the case on other grounds without confronting broader legal issues."⁴⁰

In the decision, the Indiana Supreme Court invited the Legislature to allow for actions to challenge unconstitutional taxes: "If the legislature wishes to confer original jurisdiction on the Tax Court to entertain claims of unconstitutional taxation, it is of course free to do so."⁴¹

³⁷ *Id.* at 1237.

³⁸ *Id.*

³⁹ *Montgomery*, 730 N.E.2d 680 (Ind.).

⁴⁰ *Id.* at 684 (quoting *Indiana v. Sproles*, 672 N.E.2d 1353, 1358 (Ind. 1996)).

⁴¹ *Id.* at 686.

State Legislatures Permitting Declaratory Judgment Actions in Tax Matters

As suggested by the Indiana Supreme Court, various state legislatures have accepted the invitation to allow declaratory judgments to challenge a state tax.

South Carolina statutorily allows for declaratory judgment actions if the taxpayer wants to challenge the statute as facially unconstitutional:

An action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons.⁴²

Limitations like these satisfy states' goals of reaching a speedy resolution while not bypassing an administrative agency that could help to resolve the issue. In this situation, significant fact-finding should not be necessary to litigate facial constitutional challenges. Plus, an administrative law judge likely could not rule on the constitutionality of a statute because doing so would in fact "violate the separation of powers doctrine."⁴³

Minnesota also allows for a declaratory judgment action to facially challenge a tax's constitutionality.⁴⁴ However, unlike South Carolina, Minnesota limits the availability of the declaratory judgment with other restrictions. In Minnesota, a taxpayer can pursue a declaratory judgment only if the taxpayer can demonstrate by

⁴² S.C. Code section 12-60-80(B). See also *Lightner v. Hampton Hall Club Inc.*, 798 S.E.2d 555, 560 (S.C. 2017) (holding that the declaratory judgment exception does not apply where a taxpayer did "not challenge the constitutionality of [an admission tax] statute, but rather the wrongful collection of taxes"); *Video Gaming Consultants Inc. v. South Carolina Department of Revenue*, 535 S.E.2d 642, 645 (S.C. 2000) ("Thus, we hold if the only issue is a constitutional challenge to a statute or regulation, a party should seek a declaratory judgment from circuit court rather than going before an" administrative law judge.).

⁴³ *Ward v. South Carolina*, 538 S.E.2d 245, 248 (S.C. 2000).

⁴⁴ Minn. Stat. section 270C.25, subd. 2 ("Facial challenge to constitutionality. An action, otherwise prohibited under subdivision 1, that asserts a facial challenge to the constitutionality of a tax or fee imposed by a law administered by the commissioner may be maintained only if it is demonstrated to the court by clear and convincing evidence that under no circumstances could the commissioner ultimately prevail and that the taxpayer or fee payer will suffer irreparable harm if the relief sought is not granted.").

"clear and convincing evidence that under no circumstances could the commissioner ultimately prevail" and that the taxpayer would suffer "irreparable harm" if the relief is not granted.⁴⁵ Thus, this expedited procedure is available only in limited circumstances. The Minnesota Tax Court has referred to this standard as a "high burden."⁴⁶ These limitations are unfortunate and unnecessarily restrict the availability of a declaratory judgment.

Nebraska also allows for declaratory judgment actions to challenge a tax. But the Nebraska Legislature has chosen to time-limit a declaratory judgment case: "Any action or proceeding seeking a declaratory judgment that any tax, penalty, or part thereof is unconstitutional shall be brought within twelve months after such tax or penalty was levied or assessed."⁴⁷

Oklahoma also unnecessarily restricts the availability of declaratory judgments by limiting them to taxpayers who can meet two constraints: (1) the taxpayer must contest that the law is "illegal or invalid under the Constitution or laws of [Oklahoma] or of the United States" and (2) administrative remedies must be "unavailable because the tax has not yet been assessed or proposed against such taxpayer."⁴⁸ This procedure would only be available to challenge a new tax law.

Suggestion for a Tax Declaratory Judgment Act

Declaratory judgment statutes establish expedited procedures to challenge tax laws, particularly newly imposed ones. States should consider formally — via a statute or otherwise — allowing declaratory judgment, particularly when fact-finding serves no purpose.

There arguably has been no better time to establish a declaratory judgment procedure because state tax controversies are increasing. Although there are several catalysts for the increase — for example, evolving technologies and business models that have challenged old tax regimes — there are two primary reasons. First, states are adopting entirely new types of taxes, such as the recent Chicago "social media amusement tax."⁴⁹ Second, states are applying novel legal theories — often without a new statutory basis — to long-standing tax regimes. These new taxes and new legal theories elicit challenges that are based not on a taxpayer's particular facts but rather on whether the state's position is supportable or constitutional.

States would also benefit from an expedited declaratory judgment procedure to resolve tax disputes. This is especially true when the dispute involves a newly enacted law, which invites a facial constitutional challenge. There are several recent examples in which a state adopted a new tax law or regime that raises constitutional objections. Those scenarios create unnecessary revenue pressures on state budget writers, especially given most states' requirements to balance their budgets. Under these circumstances, it makes little sense for state tax policymakers to be hamstrung in future budget cycles by a pending taxpayer challenge that may take a decade (or more) to resolve as the exhaustion process slowly grinds on. Further, a declaratory judgment process would alleviate burdens on under-resourced state courts and tax tribunals by streamlining tax appeals for a narrow subset of cases in which extensive factual development may not be required. Therefore, regardless of the overarching state tax policy of a given state, it would benefit from permitting a declaratory judgment process.

⁴⁵ *Id.*

⁴⁶ *Employer Solutions Staffing Group II LLC v. Minnesota Commissioner of Revenue*, 2013 WL 11063293, at *2 (Minn. Tax Ct. Oct. 22, 2013) (holding that the taxpayer could not meet the declaratory judgment standards in its challenge to the Minnesota use tax).

⁴⁷ Neb. Rev. Stat. section 25-21,149.

⁴⁸ Okla. Stat. tit. 68, section 227.1.A. See *In re De-Annexation of Certain Real Property From City of Seminole*, 177 P.3d 551, 556 (Okla. 2007) (holding that the declaratory judgment action standard was not met wherein taxpayers brought an action to "invalidate ordinances annexing property," not challenging the "legality of the municipal sales tax").

⁴⁹ See Emily Hollingsworth, "Chicago Finance Committee OKs Alternative Revenue Plan," *Tax Notes State*, Dec. 22, 2025, p. 894.

Conclusion

It is possible to properly design a declaratory judgment process — such as in *Wynne* or *Wayfair*⁵⁰ — that not only provides meaningful relief to taxpayers in certain types of cases but also alleviates burdens on state tax administrators and courts. A declaratory judgment provides significant benefits to taxpayers and all branches of state governments by resolving tax disputes in an efficient manner and providing more certainty for future tax periods and budget cycles. ■

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⁵⁰ See *South Dakota v. Wayfair Inc.*, 585 U.S. 162 (2018). The *Wayfair* litigation began with South Dakota filing a declaratory judgment at state court in 2016 and reached a final decision before the U.S. Supreme Court in 2018. In 2016 the South Dakota Legislature enacted S.B. 106, which allowed South Dakota to pursue declaratory relief before any South Dakota circuit court and immediately appeal to the South Dakota Supreme Court.