No. 02-1809

In the Supreme Court of the United States

J. ELLIOT HIBBS, DIRECTOR,
ARIZONA DEPARTMENT OF REVENUE, PETITIONER

v.

KATHLEEN M. WINN, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether the Tax Injunction Act, 28 U.S.C. 1341, bars an action in federal district court that seeks to enjoin a State from applying a state tax credit in determining and assessing state tax liabilities.

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INTEREST OF THE UNITED STATES

This case presents the question whether the Tax Injunction Act, 28 U.S.C. 1341, bars an action in federal district court that seeks to enjoin a State from applying a state tax credit in determining and assessing state taxes. The Tax Injunction Act generally deprives the federal district courts of jurisdiction over any action to "enjoin, suspend or restrain the assessment, levy or collection of any tax under State law" (28 U.S.C. 1341). The Act was expressly modeled by Congress on the text of the similar federal statute that, since 1867, has barred courts from exercising jurisdiction to enjoin, suspend or restrain the assessment or collection of any *federal* tax. 26 U.S.C. 7421(a). Because of the close

similarity of the text and purpose of these two provisions, this Court has expressly linked their interpretation on at least two prior occasions. See *Jefferson County* v. *Acker*, 527 U.S. 423, 434 (1999); *Enochs* v. *Williams Packing & Navigation Co.*, 370 U.S. 1, 6 (1962). The United States has a substantial interest in the proper interpretation and application of these parallel statutory provisions. For the reasons set forth below, the United States submits that the court of appeals erred in holding that the Tax Injunction Act is inapplicable to suits challenging the validity of state tax credit provisions.

STATUTORY PROVISIONS INVOLVED

1. The Tax Injunction Act, 28 U.S.C. 1341, provides:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

2. 26 U.S.C. 7421(a) provides, in relevant part:

> Except as [otherwise] provided [in the Internal Revenue Code], no 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.

STATEMENT

1. Respondents are Arizona taxpayers. They brought this suit in federal district court against J. Elliot Hibbs, in his official capacity as the Director of the Arizona Department of Revenue. In their suit, respondents claim that an Arizona state income tax

credit violates the Establishment Clause of the First Amendment to the United States Constitution.[1]

Under Ariz. Rev. Stat. § 43-1089 (2002), Arizona taxpayers are permitted to claim a dollar-for-dollar credit against their state income tax liability for contributions that they make to a "school tuition organization." This credit is limited to $500 for an individual taxpayer and to $625 for married taxpayers who file a joint state income tax return. For the credit to apply, the "school tuition organization" to which the contribution is made (i) must be exempt from federal income taxes under 26 U.S.C. 501(c)(3) and (ii) must spend at least 90% of its revenues on education scholarships or tuition grants for children to attend private primary or secondary schools. Pet. App. 12-13.

Respondents allege that these "school tuition organizations" are primarily "religious organizations that restrict their donations to religious non-public schools which in turn, use these funds to promote religious

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[1] Neither the parties nor the courts below addressed whether respondents have "Article III standing" to bring this action in federal court. See *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 475 (1982). This Court has held that a person who is not subject to a federal tax may have standing to bring a challenge to the tax based on a "specific limitation on the power to tax and spend." *Id.* at 479. A complaint that arises under the Establishment Clause satisfies that standard, for that Clause "operates as a specific constitutional limitation upon the exercise by Congress of the taxing and spending power * * * ." *Flast* v. *Cohen*, 392 U.S. 83, 104 (1968); see *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. at 479. Whether the challenge to the state tax credit in this case falls within the scope of those decisions, or otherwise satisfies the Article III standing requirement (see *Doremus* v. *Board of Education*, 342 U.S. 429, 434-435 (1952)), was not raised or addressed below.

education and worship." Pet. App. 28. Respondents sought a declaration that "the tax credit authorized by § 43-1089 allows state revenues to fund education in a religiously-preferential manner," in violation of the Establishment Clause of the First Amendment to the Constitution. *Id.* at 29. They also sought a preliminary and permanent injunction against any future application of the state tax credit and an order requiring all monies distributed to, but not yet expended by, recipient "school tuition organizations" to be "return[ed] to the state's general fund." *Id.* at 13-14, 29.

2. The district court dismissed respondents' suit. Pet. App. 27-36. The court noted that the Tax Injunction Act, 28 U.S.C. 1341, expressly bars federal district courts from enjoining, suspending or restraining "the assessment, levy or collection of any tax under [S]tate law where a plain, speedy and efficient remedy may be had in the courts of such state." Pet. App. 29-30 (quoting 28 U.S.C. 1341). The court held that respondents' request to enjoin the future application of this state tax credit in making assessments of state income taxes is expressly proscribed by the plain text of this statute. Pet. App. 30-31. "By preventing restraints on both the assessment and collection of taxes, Congress indicated that the [Tax Injunction Act] is not limited to collection only but was intended to encompass the process that the state uses in its determination of tax liability." *Id.* at 31. The court emphasized that, "when the state offers tax credits to reduce tax liability, the credits become an integral part of the State's assessment of each taxpayer's liability." *Ibid.* The Tax Injunction Act prohibits the court from exercising jurisdiction because "any determination that A.R.S. § 43-1089 is unconstitutional would restrain the State's

ability to assess taxes in accordance with its state tax system." *Ibid.*

The district court noted that respondents had not claimed that they lacked "a plain, speedy and efficient remedy" to challenge the Arizona tax credit in the Arizona state courts. Indeed, "an identical challenge to the constitutionality [of] § 43-1089" was made, and rejected, in the state courts in *Kotterman* v. *Killian*, 972 P.2d 606, cert. denied, 528 U.S. 921 (1999). Pet. App. 30 n.1. Because the State has provided adequate procedures for respondents' claims to be raised in state courts, the district court concluded that the Tax Injunction Act deprives the federal courts of jurisdiction over respondents' claims in this case. Pet. App. 34.[2]

3. The court of appeals reversed. Pet. App. 11-26. The court concluded that the district court had interpreted the term "assessment" in the Tax Injunction Act too broadly. Pet. App. 21. The court stated (Pet. App. 16) that

> [t]he term "assessment" has two definitions relevant to the question presented in this case: (1) "to estimate officially the value of (property, income, etc.) as a basis for taxation," and (2) "to impose a tax or other charge on." RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 90 (1979).

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[2] In addition, the district court held that, even if "tax credits are not covered by the specific language of the TIA, the underlying principles of comity and equitable restraint that are embodied in the Act prevent this Court from exercising jurisdiction over the action." Pet. App. 34. The district court did not address petitioner's contention that the Eleventh Amendment precludes this suit in federal court, and that contention was not raised in the petition in this case.

The court concluded that neither of these dictionary "definition[s] of the term describes the role of the * * * tax credit in the Arizona tax system." Pet. App. 16. The court stated that the tax credit was "applied to the calculation of taxes *after* a taxpayer's gross income has been determined and therefore plays no part in the 'assessment' of property or income as a basis for the imposition of taxes." *Ibid.* The court further stated that the challenged state tax credit "is not the imposition of a tax" but is instead "the grant of a benefit." *Id.* at 17. Moreover, the court reasoned that the purposes of the Tax Injunction Act would not be furthered by applying it in these circumstances because, if the state tax credit "were to be struck down on Establishment Clause grounds, Arizona's ability to raise revenue would not be diminished; on the contrary, it would be enhanced." *Id.* at 20.

For these reasons, the court concluded that the Tax Injunction Act does not bar federal courts from enjoining application of a state tax credit in the determination of state tax liabilities.[3] Pet. App. 20. The court remanded the case for the district court to address the merits of respondents' constitutional claims. *Id.* at 26.

4. When the decision of the court of appeals was announced, one judge of the Ninth Circuit requested a vote on whether the case should be heard en banc. Following that vote, the court denied the request for rehearing en banc.

Judge Kleinfeld, joined by one other judge, dissented from the denial of en banc review. Pet. App. 1-10.

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[3] For this same reason, the court of appeals also rejected petitioner's claim that general principles of comity preclude the federal courts from addressing the validity of the state tax in this case. Pet. App. 25-26.

Judge Kleinfeld stated that "[t]he panel's narrowing construction of the Tax Injunction Act ought to have been rejected." *Id.* at 3. He explained that the term "assessment" in the Tax Injunction Act has a much broader meaning than that contained in the single dictionary source cited by the panel. Judge Kleinfeld noted that other dictionaries define the term "assessment" more broadly as "the entire plan or scheme fixed upon for charging or taxing." *Id.* at 4 (quoting, *e.g.*, *Webster's Third New International Dictionary* 131 (1981)). He further emphasized that the term "assessment" has a well-established broader meaning in federal tax statutes and, in particular, in the provisions of the Internal Revenue Code. Under that well-established meaning, the statutory term "assessment" (Pet. App. 4-5 (emphasis added)):

> refers to the bottom line, how much money the taxpayer owes to the government in taxes, *after consideration of any credits as well as deductions*.

Judge Kleinfeld emphasized that "[t]here is no reason to think that Congress meant something narrower in the Tax Injunction Act than it did in the Internal Revenue Code." *Id.* at 5. Under this accepted meaning of the statutory term, Judge Kleinfeld concluded that the plain text of the Tax Injunction Act deprives the federal courts of jurisdiction to enjoin the State from applying state tax credits in making "assessments" of state income taxes. *Ibid.*

SUMMARY OF ARGUMENT

1. The court of appeals erred in its narrow interpretation of the Tax Injunction Act. That Act generally prohibits federal courts from enjoining or restraining "the *assessment*, levy or collection *of* any *tax under State law*." 28 U.S.C. 1341 (emphasis added). The court below manifestly erred in concluding that the term "assessment" in this statute refers merely to the process by which the tax collector determines the amount of *gross income* to which the tax applies. The "assessment * * * of * * * tax under State law" to which this Act refers is the entire process by which the ultimate amount of the *tax* liability is determined by the state taxing authority.

In making a tax "assessment * * * under State law," the taxing authority must do more than merely calculate the gross income to which the tax applies. It must also give effect to state-law provisions that establish deductions and tax credits. As the dissenting judges in the court below concisely and correctly explained, the statutory term "assessment * * * of * * * tax" (28 U.S.C. 1341) "refers to the bottom line, how much money the taxpayer owes to the government in taxes, *after consideration of any credits* as well as deductions." Pet. App. 4-5 (emphasis added). An injunction that prohibits the State from applying state tax credit or tax deduction provisions to individual taxpayers thus directly restrains the State from making an "assessment * * * of * * * tax under State law" (28 U.S.C. 1341). Because respondents seek precisely such an injunction, their action is barred by the plain text of the Tax Injunction Act.

2. This conclusion is compelled by the broad purposes of the Tax Injunction Act as well as by its plain

text. The Tax Injunction Act "has its roots in equity practice, in principles of federalism, and in recognition of the imperative need of a State to administer its own fiscal operations." *Tully* v. *Griffin, Inc.*, 429 U.S. 68, 73 (1976). This Court has emphasized that the Act is to be interpreted broadly and that federal courts are to "guard against interpretations of the Tax Injunction Act which might defeat its purpose and text." *Arkansas* v. *Farm Credit Services*, 520 U.S. 821, 827 (1997).

The essential purpose of this Act is "to prohibit courts from restraining any aspect of the tax laws' administration." *South Carolina* v. *Regan*, 465 U.S. 367, 399 (1984) (O'Connor, J., concurring). In particular, the Act expressly precludes "injunctions [based] upon the alleged legality or character of a particular assessment." *Ibid.* Since respondents seek an injunction precisely because of the alleged illegality of the State's assessment of taxes, and since it is not disputed that the state courts provide an adequate forum for challenging the state tax, this suit may not proceed in federal court under the Tax Injunction Act.

ARGUMENT

THE TAX INJUNCTION ACT, 28 U.S.C. 1341, BARS THIS SUIT IN FEDERAL DISTRICT COURT TO ENJOIN APPLICATION OF A STATE TAX CREDIT IN THE ASSESSMENT OF STATE INCOME TAXES

I. THE PLAIN TEXT OF THE TAX INJUNCTION ACT BARS THE INJUNCTION SOUGHT BY RESPONDENTS IN THIS CASE

The court of appeals erred in concluding that the Tax Injunction Act does not apply to this case. The plain text of the Act precludes the federal district courts

from restraining or enjoining a State from applying state tax credits in the assessment of state taxes.

1. The Tax Injunction Act generally provides that federal courts may not enjoin, suspend or restrain "the assessment, levy or collection of any tax under State law." 28 U.S.C. 1341. The court below erred in concluding (Pet. App. 16) that the term "assessment" in this statute refers merely to the process by which the tax collector determines the amount of *income* to which the tax applies. The "assessment * * * of * * * tax" to which the Act refers is the entire process by which the ultimate amount of the tax liability is determined by the state taxing authority.

In making a tax "assessment * * * under State law" (28 U.S.C. 1341), the taxing authority must do more than merely calculate the gross income to which the tax applies. It must also give effect to the state-law provisions that establish deductions and tax credits "under State law." As the dissenting judges concisely and correctly explained below, the statutory term "assessment * * * of tax under State law" "refers to the bottom line, how much money the taxpayer owes to the government in taxes, *after consideration of any credits* as well as deductions." Pet. App. 4-5 (emphasis added).[4]

2. The parallel provisions of federal tax law, on which the Tax Injunction Act was modeled, similarly specify that courts are not to restrain or enjoin the "assessment or collection of any [federal] tax." 26 U.S.C. 7421(a); see *Jefferson County* v. *Acker*, 527 U.S.

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[4] The district court similarly explained that, "when the state offers tax credits to reduce tax liability, the credits become an integral part of the State's assessment of each taxpayer's liability." Pet. App. 31.

at 434.[5] In incorporating this same terminology into the Tax Injunction Act, Congress presumably meant the term "assessment" to have the same meaning in both provisions. And, the meaning of the term "assessment" in federal tax law unquestionably encompasses not merely the determination of the amount of gross income to which the tax applies but also the application of all federal tax deduction and tax credit provisions.

The "assessment * * * of tax" described in the text of 26 U.S.C. 7421(a) is plainly *not* the limited, dictionary definition of an "assessment" selected by the court of appeals.[6] Under the Internal Revenue Code, an assessment of a tax is the formal administrative record of "the *liability* of the taxpayer." 26 U.S.C. 6203 (emphasis added). The "assessment" is made through a "summary record of assessment," which, with supporting records,

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[5] The Tax Injunction Act was enacted in 1937. The federal tax analogue on which it was modeled was first enacted as Section 10 of Chapter 169 of the Act of Mar. 2, 1867, 14 Stat. 475, and is now codified at 26 U.S.C. 7421(a). In language that Congress also employed in the text of the Tax Injunction Act, this venerable statute has specified since 1867 that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." § 10, 14 Stat. 475.

[6] To the extent that the dictionary definition of "assessment" is relevant in determining the meaning of that statutory term of art, contemporaneous dictionaries reflect a considerably broader understanding of the term than the meaning selected by the court of appeals. See, *e.g.*, *Funk & Wagnall's New Standard Dictionary of the English Language* 171 (1946) ("[t]he official apportionment of taxes" or "[t]he amount so fixed"); *Webster's New International Dictionary* 139 (1917) ("act of apportioning or determining an amount or amounts to be paid; as, an *assessment* of damages, or of taxes"; "[t]he entire plan or scheme fixed upon for charging or taxes; also, the valuation, or a specific charge or tax, determined upon").

identifies the taxpayer, the period of tax involved, "and the amount of the assessment." 26 C.F.R. 301.6203-1. The "assessment" is thus "essentially a bookkeeping notation" that serves as a formal record of the total amount of the tax liability determined by the taxing authority. *Laing* v. *United States*, 423 U.S. 161, 170 n.13 (1976). In short, by the time that the Tax Injunction Act was enacted in 1937, it was well established that the "assessment" of a federal tax is the administrative process by which the taxing authority determines and records "the total tax" owed. *Anderson* v. *United States*, 15 F. Supp. 216, 225 (Ct. Cl. 1936), cert. denied, 300 U.S. 675 (1937).

This fundamental characteristic of an "assessment * * * of * * * tax" (28 U.S.C. 1341) is reflected in numerous provisions of the Internal Revenue Code. For example, the federal tax lien arises in property of the taxpayer "at the time the assessment is made and * * * continue[s] until the *liability for the amount so assessed* * * * is satisfied * * * ." 26 U.S.C. 6322 (emphasis added). As this statute reflects, the "assessment" is the formal record of the "amount" of the tax "liability" of the taxpayer. See M. Saltzman, *IRS Practice & Procedure* ¶ 10.02 , at 10-4 to 10-7 (2d ed. 1991) (the "assessment" is the record of "the total tax liability" and sets out the "specific amount of tax" owed). Similarly, the Internal Revenue Code further specifies that "*the amount of any tax* imposed by this title *shall be assessed* within 3 years after the return was filed." 26 U.S.C. 6501(a) (emphasis added). It is thus the amount of the *tax*, not merely the amount of the taxpayer's "income," that is assessed.

3. Contrary to the reasoning of the court below, the term "assessment" as used in these statutes thus does *not* refer simply to the process by which gross income is

determined. Instead, the allowance of a tax credit is as much a part of the "assessment" as is the determination of the income and the deductions of the taxpayer. As the Fifth Circuit recently concluded in *ACLU Foundation* v. *Bridges*, 334 F.3d 416, 421 (5th Cir. 2003), the term "assessment" in the Tax Injunction Act necessarily encompasses "'the entire plan or scheme fixed upon for charging or taxing.' Webster's Third New International Dictionary 131 (1981)."

The reasoning of the court of appeals failed to address the entire relevant text of the statute. In looking for a dictionary definition of the word "assessment" in isolation from the balance of the statutory text, the court neglected to consider that this word draws meaning from its context.[7] The statutory phrase of relevance to this case is that federal courts are barred from enjoining the "assessment * * * *of* * * * *tax under State law*." 28 U.S.C. 1341 (emphasis added). It is the assessment *of tax* that may not be restrained; and, in particular, the State may not be restrained from applying "State law" in making such an assessment. Since the precise relief sought by respondents in this case is an order restraining the State from applying its state tax credit law in making assessments of state tax, respondents' action is barred by the plain text of the Tax Injunction Act.

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[7] "[T]he meaning of statutory language, plain or not, depends on context." *King* v. *St. Vincent's Hospital*, 502 U.S. 215, 221 (1991). "Words are not pebbles in alien juxtaposition; they have only a communal existence; and not only does the meaning of each interpenetrate the other, but all in their aggregrate take their purport from the setting in which they are used . . . ." *Ibid.* (quoting *NLRB* v. *Federbush Co.*, 121 F.2d 954, 957 (2d Cir. 1941) (L. Hand, J.)).

4. The court of appeals also erred in suggesting that the Tax Injunction Act should not apply whenever the requested relief would increase, rather than diminish, the ultimate amount of taxes collected. Pet. App. 21-22. As the Sixth Circuit explained in *In re Gillis*, 836 F.2d 1001, 1005 (1988), "[w]hile admittedly the great majority of cases present plaintiffs seeking to enjoin the collection of taxes, and certainly the most direct threat to the state fisc is presented when the collection of taxes is enjoined, still the Act is not, by its own language, limited to the *collection* of taxes." Instead, the Act broadly prohibits federal courts from restraining any "assessment * * * of * * * tax under State law." 28 U.S.C. 1341.

A federal suit to enjoin a state tax credit is, in any event, as significant an intervention in a State's tax administration as is a suit to enjoin an *increase* in the State's taxes. In rejecting the suggestion that a suit that could result in an increase in state tax collections should be treated as outside the scope of the Tax Injunction Act, the Eleventh Circuit pointed out in *Colonial Pipeline Co.* v. *Collins*, 921 F.2d 1237, 1242 (1991), that:

> In making these overly literal and technical attempts to distinguish its claim from the scope of section 1341, Colonial ignores the basic fact that its requested relief, if granted, would require a massive federal judicial intervention into virtually all phases of Georgia's ad valorem tax system. Such an intrusion would clearly conflict with the principle underlying the Tax Injunction Act that the federal courts should generally avoid interfering with the sensitive and peculiarly local concerns surrounding state taxation schemes.

See also *In re Gillis*, 836 F.2d at 1008 ("the interference by the federal courts into the state tax system is the same in degree and kind as a suit seeking to enjoin a state tax; and the expense to the state in defending the action is identical"); *United States Brewers Ass'n* v. *Perez*, 592 F.2d 1212, 1214 (1st Cir. 1979) (even litigation that might increase the amount of taxes collected would impermissibly "disrupt the orderly collection and administration of state taxes").[8]

It is, in any event, far from certain that a victory by persons who challenge a tax credit will necessarily result in the collection of more taxes by the State. As the court emphasized in *ACLU Foundation* v. *Bridges*, 334 F.3d at 421, a State "may resolve any putative constitutional problems created by the challenged statutes by exempting more entities and therefore collecting less taxes." The ultimate effect of invalidating a tax credit thus cannot be foretold with certainty. See *Davis* v. *Michigan Department of Treasury*, 489 U.S. 803, 818 (1989) (the invalidity of a state tax exemption may be remedied by the State "either by extending the tax exemption" to a broader class of recipients "or by eliminating the exemption"). Such speculation, in any event, has no bearing on the proper application of the express prohibition of the Tax Injunction Act against restraints on the "assessment * * * of * * * tax under state law." 28 U.S.C. 1341.

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[8] The court of appeals thus erred in concluding that the Act is inapplicable because "the challenged practice is not the imposition of a tax." Pet. App. 17. The relevant question under the Act is whether the plaintiff seeks to interfere with the "assessment * * * of a tax under State law." The fact that a state tax credit is not itself the "imposition of a tax" is beside the point, because a State tax credit is an integral part of the process of assessing a tax.

II. THE TAX INJUNCTION ACT IS TO BE INTERPRETED BROADLY IN LIGHT OF THE CLEAR INTENTION OF CONGRESS TO LIMIT THE INTERFERENCE OF FEDERAL DISTRICT COURTS IN THE STATE'S ADMINISTRATION OF ITS FISCAL POLICIES

1. The Tax Injunction Act "has its roots in equity practice, in principles of federalism, and in recognition of the imperative need of a State to administer its own fiscal operations." *Tully* v. *Griffin, Inc.*, 429 U.S. 68, 73 (1976). See *Arkansas* v. *Farm Credit Services*, 520 U.S. 821, 832 (1997). Both "Congress and this Court repeatedly have shown an aversion to federal interference with state tax administration." *National Private Truck Council, Inc.* v. *Oklahoma Tax Commission*, 515 U.S. 582, 586 (1995). This Court has emphasized that "[t]he States' interest in the integrity of their own processes is of particular moment respecting questions of state taxation," and "[t]he federal balance is well served when the several States define and elaborate their own laws through their own courts and administrative processes and without undue interference from the Federal Judiciary." *Arkansas* v. *Farm Credit Services*, 520 U.S. at 826. The Court has therefore instructed "federal courts [to] guard against interpretations of the Tax Injunction Act which might defeat its purpose and text." *Id.* at 827.

The Court has thus made clear that the provisions of this Act are to be broadly interpreted to achieve the legislative goal of minimizing federal interference in state tax matters. *Arkansas* v. *Farm Credit Services*, 520 U.S. at 827.[9] Although the history of the Act

[9] Indeed, in various contexts, the Court has concluded that the prohibitions of the Tax Injunction Act reach beyond its literal

addressed a particular congressional concern that out-of-state corporations were improperly using federal litigation to delay the payment of state taxes, the Court has emphasized that "the expansive language of the statute belies the notion that Congress was concerned exclusively with this problem." *Rosewell* v. *LaSalle National Bank*, 450 U.S. 503, 522 n.29 (1981). Instead, the enactment of "the Tax Injunction Act demonstrates that Congress worried not so much about the form of relief available in the federal courts, as about divesting the federal courts of jurisdiction to interfere with state tax administration." *California* v. *Grace Brethren Church*, 457 U.S. at 409 n.22.

2. Consistent with this Court's admonition, the courts of appeals have routinely given a broad interpretation to the provisions of this Act. They have, for example, held that "the Act prohibits relief where it would result in a restraint on tax assessment even though achieved indirectly" (*Jerron West, Inc.* v. *California State Bd. of Equalization*, 129 F.3d 1334, 1338 (9th Cir. 1998)), and have further concluded that the Act bars federal jurisdiction in actions for refund or damages "lest the Tax Injunction Act be deprived of its full effect." *Marvin F. Poer & Co.* v. *Counties of Alameda*, 725 F.2d 1234, 1236 (9th Cir. 1984). The courts have also ruled that the Act "deprives the district court of jurisdiction over the claims of unlawful

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scope. For example, in *National Private Truck Council, Inc.* v. *Oklahoma Tax Commission*, 515 U.S. at 588, the Court held that federal courts should not "award damages or declaratory or injunctive relief in state tax cases when an adequate state remedy exists." See also *California* v. *Grace Brethren Church*, 457 U.S. 393, 408-409 (1982) (applying the Tax Injunction Act to prohibit a district court from issuing a declaratory judgment holding state tax laws unconstitutional).

arrest and assault" in an action against State officials involving state taxes, because such a suit "would intrude on the enforcement of the state [tax] scheme." *Comenout* v. *Washington*, 722 F.2d 574, 578 (9th Cir. 1983). See also *Dillon* v. *Montana*, 634 F.2d 463, 465 (9th Cir. 1980) ("this court has recognized that any effort to obtain tax exemption or adjustment in federal court interferes with the fiscal operations of the state"); *United Gas Pipe Line Co.* v. *Whitman*, 595 F.2d 323, 326 (5th Cir. 1979) (stating that the Tax Injunction Act "is meant to be a broad jurisdictional impediment to federal court interference with the administration of state tax systems").

That broad view of the scope of the Act is paralleled by the broad interpretation given to 26 U.S.C. 7421(a), on which the Tax Injunction Act was modeled. See note 5, *supra*. The history of 26 U.S.C. 7421(a) "reflects the congressional desire that all injunctive suits against the tax collector be prohibited." *South Carolina* v. *Regan*, 465 U.S. 367, 387 (1984) (O'Connor, J., concurring). "The Court has interpreted the principal purpose [of 26 U.S.C. 7421(a)] to be the protection of the Government's need to assess and collect taxes as expeditiously as possible with a minimum of preenforcement judicial interference." *Bob Jones University* v. *Simon*, 416 U.S. 725, 736 (1974). And, under 26 U.S.C. 7421(a), as under the Tax Injunction Act, the "ban against judicial interference * * * is equally applicable to activities which are intended to or may culminate in the assessment or collection of taxes." *Smith* v. *Rich*, 667 F.2d 1228, 1230 (5th Cir. 1982).

These parallel statutory prohibitions against judicial restraints on the assessment of taxes do not become inapplicable merely because the "legality of the agency's action is in question." *Yamaha Motor Corp.*,

U.S.A. v. *United States*, 779 F. Supp. 610, 613 (D.D.C. 1991).[10] As Justice O'Connor emphasized in a concurring opinion in *South Carolina* v. *Regan*, 465 U.S. at 399, the broad purpose of the tax anti-injunction provisions is "to prohibit courts from restraining any aspect of the tax laws' administration." To further that goal, these statutes expressly preclude "injunctions [based] upon the alleged legality or character of a particular assessment." *Ibid.* In the present case, respondents seek an injunction against the "assessment * * * of * * * tax under state law" (28 U.S.C. 1341) that is based precisely upon the claim that such assessments would be unlawful. That claim for relief is barred in federal district court by the clear text and broad purposes of the Tax Injunction Act.

[10] The prohibition in 26 U.S.C. 7421(a) against an action to restrain the assessment of federal taxes has been applied in circumstances similar to those of the present case. In *Haring* v. *Blumenthal*, 471 F. Supp. 1172, 1177-78 (D.D.C. 1979), for example, the court held that 26 U.S.C. 7421(a) "prevents the institution of injunction actions to challenge tax exemption rulings in favor of other taxpayers."

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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