

APP NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

THE WALT DISNEY COMPANY AND
CONSOLIDATED SUBSIDIARIES,

Petitioner,

v.

THE TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK
and THE COMMISSIONER OF TAXATION AND FINANCE OF
THE STATE OF NEW YORK,

Respondents

On Application for an Extension of Time
to File Petition for a Writ of Certiorari
from July 22, 2024 to August 21, 2024

**PETITIONER'S APPLICATION TO EXTEND TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

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Corporate Disclosure Statement

Pursuant to Supreme Court Rule 29.6, Petitioner The Walt Disney Company and Consolidated Subsidiaries (“Disney”) states that it is a Delaware for-profit corporation with no parent corporation and no publicly held company owns 10% or more of its stock pursuant to Disney's Annual Financial Report (Form 10-k) for the fiscal year ending September 30, 2023.

To the Honorable Justice Sotomayor, as Circuit Justice for the United States Court of Appeals for the Second Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30, Petitioner The Walt Disney Company and Consolidated Subsidiaries (“Disney” or Applicant) respectfully requests that the time to file a petition for a writ of certiorari in this case be extended for 60 days to and including September 20, 2024. The New York Court of Appeals issued its opinion on April 22, 2024. See App. 1. Absent an extension of time, the Petition for Writ of Certiorari would be due on July 22, 2024. Applicant is filing this Application more than ten (10) days before that date. See Sup. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1257 to review this case.

BACKGROUND

This case presents an important question regarding The Commissioner of Taxation and Finance of the State of New York's and The Tax Appeals Tribunal of the State of New York's ("New York") authority to disparately treat interstate commerce. The New York State Court of Appeals held that New York's treatment of royalties received from an out-of-state royalty payor did not violate the dormant Commerce Clause prohibition against facial and as-applied discrimination. The Court of Appeals decision contradicts this Court's precedent. *Kraft Gen. Foods, Inc. v. Iowa Dep't of Revenue & Fin.*, 505 U.S. 71 (1992); *Boston Stock Exchange v. State Tax Comm'n*, 429 U.S. 318 (1977); *Westinghouse Elec. Corp. v. Tully*, 466 U.S. 388 (1984).

The Court of Appeals recognized that New York found that Disney did not qualify for a royalty income exclusion solely because the payor was not a New York taxpayer. The court further recognized that New York's construction predicated the tax benefit on a geographic determinant – whether the royalty payor was subject to New York taxation. Despite acknowledging that New York's construction imposed a geographic determinant, the Court of Appeals failed to find that this Court's precedent establishes that such a determinant constitutes facial discrimination. *Or. Waste Sys. v. Dep't of Env'tl. Quality*, 511 U.S. 93 (1994). Therefore, the Court failed to conclude that the geographic determinant proved New York's construction was facially discriminatory.

A state may attempt to justify a per se invalid facially discriminatory tax. *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383 (1994). To do so, a state must prove that the facially discriminatory statute serves a legitimate local purpose and that the purpose cannot be advanced by a nondiscriminatory alternative. A state's justification of a facially discriminatory law is subject to the strictest scrutiny. *Dep't of Revenue v. Davis*, 553 U.S. 328 (2008).

The Court of Appeals failed to strictly scrutinize New York's justification for the facially discriminatory tax. The court's construction of the law to limit the royalty exclusion to royalties received from a New York taxpayer does not advance the statute's local purpose, which was to prevent the multiple taxation of royalty income. The court's construction of the law, in fact, does the opposite of what the legislature intended – it results in the multiple taxation of royalty income from non-New York royalty payors. The local purpose of avoiding multiple taxation of royalty income is achieved when the royalty exclusion is permitted for royalty payments received from both in-state and out-of-state royalty payors. Furthermore, the court failed to find that the law's local purpose could not be advanced by alternative, non-discriminatory means. In fact, the New York State legislature amended the law in 2013 to accomplish the local purpose of avoiding multiple taxation through a different means (by eliminating the royalty exclusion and reducing the royalty addback by the amount of royalty payments subject to taxation).

The Court of Appeal's decision is erroneous because it fails to recognize that the tax is facially discriminatory and apply strict scrutiny to New York's attempt to justify such discrimination against interstate commerce.

This application followed.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a petition for a writ of certiorari should be extended for 60 days, to September 20, 2024, for several reasons.

First, no prejudice would result from the extension. Whether the extension is granted or not, the petition will be considered during the October 2024 Term. In the interim, the status quo *ante* remains intact.

Second, the Applicant recently made the determination to petition for a Writ of Certiorari to the Court. The Applicant requires additional time to fully and properly brief the complex issues in this case pertaining to the Constitutional limitations on state taxation – specifically, the discrimination against interstate commerce permitted by the New York Court of Appeals decision. The recent decision to proceed and the complexity of the legal issues will make submission of the petition difficult absent an extension.

Finally, the petition is likely to be granted. This case presents a fundamental question that impacts all multistate taxpayers – whether New York can construe its law to discriminate against interstate commerce. The New York State Court of Appeals decision conflicts with this Court’s precedent regarding identifying facial discrimination and whether such facial discrimination can be justified.

Applicant therefore request a sixty-day extension to allow for the preparation of a petition that fully addresses the important and far-reaching issues raised by the decision below.

CONCLUSION

WHEREFORE, for the foregoing reasons, Applicants request that an extension of time of 60 days be granted within which Applicants may file a petition for a writ of certiorari to and including September 20, 2024.

Respectfully submitted,



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Addendum A