

JOHN A. SWAIN

University of Arizona, Rogers College of Law
1201 E. Speedway Blvd., Tucson, Arizona 85721-0176
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EDUCATION

Yale Law School, J.D., 1984.
Editor, Yale Law and Policy Review.

Dartmouth College, A.B., government, *summa cum laude*, 1978.

ACADEMIC POSITIONS

Chester H. Smith Professor of Law

The University of Arizona

James E. Rogers College of Law

(2014 to 2020) (Emeritus status 2021-present)

Courses taught: State and Local Tax; International Tax; Federal Income Tax; Corporate Tax; Advanced Corporate Tax; Taxation of Gifts and Estates, Nonprofit Organizations; Estates and Trusts; Property; and Professional Responsibility.

Professor of Law

The University of Arizona

James E. Rogers College of Law

(2009 to 2014)

Associate Professor of Law

The University of Arizona

James E. Rogers College of Law

(2001-02 to 2008-09)

L.L.M. Tax Faculty

The University of Alabama School of Law

(2009 to 2020)

Courses taught: State and Local Tax; International Tax; Corporate Tax; Advanced Corporate Tax.

Associate Professor of Law

The Appalachian School of Law

(Associate professor 2000-01; assistant professor spring 1999, 1999-2000)

Adjunct Professor of Law

Arizona State University

(Fall 1997)

Visiting Professor
Ocean University of China
Qingdao, China
(Spring 2019)

NON-ACADEMIC LEGAL EXPERIENCE

Partner
Streich Lang (now Quarles & Brady)
Phoenix, Arizona
(Partner 1992-1998; Associate 1987-1992)

Associate
Rodey, Dickason, Sloan, Akin & Robb
Albuquerque, New Mexico
(1984-1987)

AWARDS AND HONORS

Named to *The All-Decade State and Local Tax Team*, 55 STATE TAX NOTES 127 (2010).

Leslie F. and Patricia Bell Faculty Service Award (2010-11).

EXPERT WITNESS AND RELATED EXPERIENCE

Expert Witness, South Carolina Department of Revenue, 2022 (Elavon, Inc. v. South Carolina Department of Revenue, No. 20-ALJ-17-0167-CC, Admin. Law Ct.) (state income tax apportionment).

Expert Witness, South Carolina Department of Revenue, 2022 (Mastercard International Incorporated v South Carolina Department of Revenue, No. 20-ALJ-17-0008-CC, Admin. Law Ct.) (state income tax apportionment).

Expert Witness, Invest in Education, 2020 (Molera v. Hobbs, No. CV2020-007964, Ariz. Super. Ct.) (testimony regarding challenge to validity ballot initiative to impose income tax surcharge to support education).

Expert Witness, Alabama Attorney General, 2018 (Day v. Department of Revenue, No. INC. 17-879-CE, Ala. Tax. Trib.) (income tax credits for taxes paid to other states).

Expert Witness, Northwest Arctic Borough, 2016-2017 (Tech Alaska, Inc. v. Northwest Arctic Borough, No. 2KB-16-00013 CI, AK Super. Ct., 2d Judicial Dist., Kotzebue) (constitutionality of local mining tax).

Expert Witness, Utah Attorney General, 2015-2016 (See's Candies Inc. v. Utah State Tax Commission, No. 140401556, Utah 4th Judicial Dist. Ct.). (reallocation of royalty income and expenses).

Expert Witness, South Carolina Department of Revenue, 2014-15 (DISH DBS Corporation, f/k/a Echostar DBS Corp., and Affiliates v. South Carolina Department of Revenue, Civil Action No. 14-ALJ-17-0285-CC) (income tax apportionment).

Expert Witness, South Carolina Department of Revenue, 2014-15 (DIRECTV, Inc. v. South Carolina Department of Revenue, Civil Action No. 14-ALJ-17-0158-CC) (income tax apportionment).

Expert Witness, Nevada Department of Revenue, 2013 (Southern California Edison v. Nevada, Case No. 09-OC-00016 1B, 1st Jud. Dist., Carson City, Nevada) (Commerce Clause discrimination remedies).

Consultant, New York telecommunications tax matter involving multinational telecommunications company (2012-present).

Consultant and Expert Witness, South Carolina Department of Revenue 2011-12 (Duke Energy Corp. v. South Carolina Dept. of Revenue, No. 10-ALJ-17-0270-CC, S.C. Admin. Law Ct.) (income tax apportionment).

Consultant and Expert Witness, Vodafone Americas Holdings 2011-12 (Vodafone Americas Holdings, Inc. v. Farr, Docket No. 07-1860-IV, Tenn. Chancery Court, 20th Jud. Dist., Davidson Cty., Tennessee) (income tax apportionment).

Consultant and Expert Witness, Trans-Alaskan Pipeline Owners, 2010-12 (BP Pipelines (Alaska) Inc. et al. v. State of Alaska Dept. of Revenue, et al. – Superior Court for the State of Alaska, Cause No. 3AN=06-8446 CI) (property tax valuation of Alaskan Pipeline).

Consultant and Expert Witness, State of Minnesota, 2004-06 (MBNA America Bank, N.A. v. Minnesota Commissioner of Revenue, No. 7598-R; and Providian Financial Corporation and Subsidiaries v. Minnesota Commissioner of Revenue, No. C3-03-010083) (income tax nexus cases)

Consultant, State of Mississippi, 2004-05 (WorldCom bankruptcy tax claim).

SCHOLARSHIP

BOOKS

STATE TAXATION (3d ed., Warren, Gorham & Lamont 2020 rev.) (co-author, with Walter Hellerstein).

STATE AND LOCAL TAXATION: CASES AND MATERIALS (11th ed., West 2019) (co-author, with Walter Hellerstein, Kirk Stark, & Joan Youngman).

THE STREAMLINED SALES AND USE TAX (co-author, with Walter Hellerstein) (4th ed., Warren, Gorham & Lamont 2007/2008).

CHAPTERS

Federal Constitutional Limits on State Taxation, in SALES AND USE TAXATION (2d ed., Institute for Professionals in Taxation) (William Fox ed., 2016).

State and Local Tax Aspects of Bankruptcy, in 1A COLLIER ON BANKRUPTCY (15th ed. 1992).

ARTICLES

Platforms: The Finale, 95 STATE TAX NOTES 11 (2020) (with Walter Hellerstein & Jonathan E. Maddison).

Platforms: The Sequel, 91 STATE TAX NOTES 7 (2019) (with Walter Hellerstein & Jonathan E. Maddison).

A Primer on Other State Tax Credits, 88 STATE TAX NOTES 1061 (2018).

Platforms, 86 STATE TAX NOTES 1165 (2017) (with Walter Hellerstein & Jonathan E. Maddison).

IRC Section 482: It's Not Just About Transfer Pricing, 86 STATE TAX NOTES 149 (2017).

The Zombie Precedent: Norton Co. v. Department of Revenue, 84 STATE TAX NOTES 301 (2017).

The Sales Taxation of Amusements, 82 STATE TAX NOTES 909 (2016).

Florida's (Not So) Bizarre Tax on Florists' Sales, 81 STATE TAX NOTES 189 (2016) (co-author with Walter Hellerstein).

The Streamlined Sales and Use Tax Agreement in the Courts, 79 STATE TAX NOTES 719 (2016).

Reconciling the Marketplace Fairness Act with Origin Sourcing, 75 STATE TAX NOTES 809 (2015).

It's Time to Abandon Retroactive Application of UDITPA Section 18, 73 STATE TAX NOTES 53 (2014).

Facial State Tax Discrimination Allegedly Causing No Harm, 75 STATE TAX NOTES 749 (2015) (co-author with Walter Hellerstein).

State Jurisdiction to Tax Nowhere Activity, 33 VA. TAX REV. 209 (2013) (co-author, with Walter Hellerstein).

The Questionable Constitutionality of Amazon's Distribution Center Deals, 62 ST. TAX NOTES 667 (2011) (co-author, with Walter Hellerstein).

The Market State Approach to the Attribution of Receipts from Services, 59 STATE TAX NOTES 331 (2011) (co-author, with Walter Hellerstein).

Misalignment of Substantive and Enforcement Tax Jurisdiction in a Mobile Economy: Causes and Strategies for Realignment, 63 NAT'L TAX J. 925 (2010).

Classifying State and Local Taxes: Current Controversies, 54 STATE TAX NOTES 35 (2009) (co-author, with Walter Hellerstein).

Riverboat Gambling and Use Tax Planning: When to Hold and When to Fold, 53 STATE TAX NOTES 105 (2009).

Reforming the State Corporate Income Tax: A Market State Approach to the Sourcing of Service Receipts, 83 TUL. L. REV. 285 (2008).

A Comparative Look at International and State and Local Taxation, 50 ARIZ. L. REV. 111 (2008).

Town Fair Tire and the Silliness of the Physical Presence Rule for Use Tax Collection Nexus, 50 STATE TAX NOTES 447 (2008) (co-author, with Walter Hellerstein).

A Brief History of UDITPA and the Corporate Income Tax Uniformity Movement, 49 STATE TAX NOTES 759 (2008).

Further Thoughts on the "Subject to Tax" Exception in State Corporate Income Tax Expense Disallowance Statutes, 48 STATE TAX NOTES 597 (2008) (co-author, with Walter Hellerstein).

The Federal Role in State Taxation: A Normative Approach, 60 NAT'L TAX J. 611 (2007) (co-author, with William Fox).

The Sales Taxation of Customer Loyalty Programs, 45 STATE TAX NOTES 717 (2007).

The Sales and Use Tax Dichotomy and the Streamlining Movement, 43 STATE TAX NOTES 129 (2007).

The Streamlined Sales Tax Project and the Local Sourcing Conundrum, 104 J. TAX'N 230 (2006) (co-author, with Walter Hellerstein).

The Wages of Virtue: Voluntary Registration and Jurisdiction to Tax, 42 STATE TAX NOTES 131 (2006).

Local Sales Tax Sourcing and the Streamlining Movement, 41 STATE TAX NOTES 697 (2006).

What Is a "Sale" for Sales Tax Purposes? (Part 2), 40 STATE TAX NOTES 471 (2006).

What Is a "Sale" for Sales Tax Purposes? (Part 1), 38 STATE TAX NOTES 873 (2005).

The Political Economy of the Streamlined Sales and Use Tax, 58 NAT'L TAX J. 605 (2005) (co-author, with Walter Hellerstein).

Piercing the Veil to Assert Personal Jurisdiction over Corporate Affiliates: An Empirical Study of the Cannon Doctrine, 84 B. U. L. REV. 446 (2004) (co-author, with Edwin Aguilar).

Third-Party Payments and Bundled Transactions, 37 STATE TAX NOTES 659 (2005) (co-author, with Walter Hellerstein).

Internet Travel Companies: Taxing the Middleman, 35 STATE TAX NOTES 477 (2005).

The Streamlined Sales and Use Tax Agreement's Sourcing Rules, 34 STATE TAX NOTES 375 (2004) (co-author, with Walter Hellerstein).

Sausage-Making Streamlining-Style: Coupons, Rebates, and other Third-Party Payments, 33 STATE TAX NOTES 794 (2004).

H.R. 3220: A Ringing Endorsement of Factor Nexus, 33 STATE TAX NOTES 61 (2004).

Rethinking Entity Isolation: The Dangers of Pioneering, and of the Leading Case Method, 32 STATE TAX NOTES 197 (2004).

State Income Tax Jurisdiction: A Jurisprudential and Policy Perspective, 45 WM. & MARY L. REV. 319 (2003).

State Sales and Use Tax Jurisdiction: An Economic Nexus Standard for the 21st Century, 38 GA. L. REV. 343 (2003).

Cybertaxation and the Commerce Clause: Entity Isolation or Affiliate Nexus?, 75 S. CAL. L. REV. 419 (2002).

The Taxation of Private Interests in Public Property: Toward a Unified Theory of Property Taxation, 2000 UTAH L. REV. 421.

Possessory Interests: A Systematic Valuation Approach, 11 J. PROP. TAX MGMT. 1 (2000) (co-author, with Joseph M. Davis).

National Nexus Program for Resolving Past State Tax Liabilities, 26 TAX'N FOR LAW. 324 (1998) (co-author, with Ronold P. Platner), reprinted in 60 TAX'N FOR ACCT. 206 (1998) and TAX IDEAS ¶ 850 (1998).

OTHER WRITINGS

Hold the Pickles, Hold the Lettuce: Tailored Taxes, 95 STATE TAX NOTES 213 (2020).

The Gift of the Tax Guy, 90 STATE TAX NOTES 1143 (2018).

Quexit: The Time Has Come, 81 STATE TAX NOTES 695 (2016).

State Tax Notes: Striking the Right Chord, 81 STATE TAX NOTES 768 (2016).

Are Bees Livestock? A lighthearted Look at Legal Analysis, 77 STATE TAX NOTES 241 (2015).

Checkpoint Catalyst Topic #1001, State Taxation: Basic Principles (2014).

Checkpoint Catalyst Topic #1007, Sales Factor (2014) (co-author, with Melissa A. Oaks).

State Tax Apportionment: The Role of Congress in Developing Apportionment Standards, before the Subcomm. on Admin. and Commercial Law of the House Comm. On the Judiciary, 111th Cong., 2d Sess. (May 6, 2010), reprinted in 56 STATE TAX NOTES 416.

What Jim Cramer Can Teach us About State and Local Government Finance, 51 STATE TAX NOTES 1049 (2009).

Walter Hellerstein: the Annotation is in the Grooves, 51 STATE TAX NOTES 91 (2009) (tribute).

The Pumpkin Tax, 46 STATE TAX NOTES 363 (2007).

The Three Most Important Things to Know about the Streamlined Sales Tax: Amnesty, Amnesty, and Amnesty, 38 STATE TAX NOTES 137 (2005).

The Fox and the Chicken: 16 Tips for State Tax Administrative Practice, 31 STATE TAX NOTES 57 (2004).

Book review, *Property-Tax Exemption for Charities* (Evelyn Brody, ed.), 41 J. ECON. LIT. 1311 (2003).

State Income Tax Nexus: Making the Case for an Economic Presence Standard in Light of Quill, 9 MULTISTATE TAX REP. 965 (2002).

Reflections on the Possessory Interest Tax, Part 2: Toward a General Theory of Property Taxation, 26 STATE TAX NOTES 103 (2002).

Reflections on the Possessory Interest Tax, Part 1: Toward a General Theory of Possessory Interest Taxation, 24 STATE TAX NOTES 189 (2002).

Real Property Tax Valuation Appeals: A Primer, 27 ARIZ. ATT'Y, Dec. 1990, at 17.

Municipal Sales and Use Taxes: Highlights of the New Model City Tax Code, 23 ARIZ. B.J., June/July 1987, at 12 (co-author, with Howard J. Kalson).

Efficacy of Illinois Vehicle Safety Inspection Program, YALE LEGIS. SERV. (1982).

PRESENTATIONS (SINCE 2000)

Speaker, *Transfer Pricing for State Tax Lawyers and Auditors* (Multistate Tax Commission, webinar, May 8 and 19, 2020).

Presenter, *Online Sales Tax—Life After the Supreme Court's Ruling in Wayfair*, conference call with investors, D.A. Davidson Companies, Feb. 10, 2020).

Speaker, *Attribution of Receipts from Services and Intangibles for State Income Tax Apportionment Purposes* (101st Annual Arizona Tax Conference, Tucson, AZ, Oct. 11, 2018).

Speaker, *Federal Limits on State Taxation* (Portland Tax Forum, Portland, OR, January 18, 2018).

Panelist, *UDITPA Section 18*, (50th Annual Meeting of the Multistate Tax Commission, Louisville, KY, Aug. 2, 2017).

Speaker, *Revisiting Quill: Where We Are Now* (99th Annual Arizona Tax Conference, Tucson, AZ, Oct. 14, 2016).

Speaker, *Quexit: Revisiting Quill* (Western States Association of Tax Administrators Annual Meeting, Scottsdale, AZ, Sept. 24, 2016).

Speaker, *An Academic Perspective on State Level Income Shifting: Problems and Solutions* (Multistate Tax Commission, 2016 Winter Meeting, Salt Lake City, UT, March 3, 2016).

Panelist, *Marketplace Fairness Act* (American Bar Association, Section of Taxation, Midyear Meeting, Los Angeles, CA, Jan. 29, 2016).

Panelist, *Taxing Remote Sales in the Digital Age* (American University Law Review Annual Symposium, Washington DC, Nov. 13, 2015).

Panelist, *Analyzing Case Outcomes in a New Economy* (38th Annual Advanced State and Local Tax Institute, Georgetown Law Center, Washington, DC, Aug. 7, 2015).

Panelist, *Practical and Policy Implications of the Trend Toward Single Sales Factor Apportionment* (37th Annual Advanced State and Local Tax Institute, Georgetown Law Center, Washington, DC, Aug. 7, 2014).

Paper Presentation, *State Income Taxation of Out-of-State Corporate Partners* (Chapman Law Review Annual Symposium, Orange, CA Mar. 14, 2014).

Keynote Speaker, *Can this End Well? Megatrends in State Taxation* (96th Annual Arizona Tax Conference, Flagstaff, AZ Sept. 26, 2013).

Speaker, *State Taxation of Cloud Computing* (State Bar of California Annual Income Tax Seminar, University of San Diego School of Law, June 28, 2013).

Speaker, *Retroactivity and Equitable Apportionment of Business Income for State Tax Purposes* (Federation of Tax Administrators, Albuquerque, NM, June 11, 2013).

Keynote Panelist, *The Future of Amazon.com and the Implications for Traditional Retailers and E-Commerce Competitors* (Telsey Advisory Group's 5th Annual Spring Consumer Conference, New York, NY, April 8, 2013).

Paper Presentation, *State and Local Taxation of Cloud Computing: A Normative Approach* (National Tax Association Annual Conference, Providence, RI, Nov. 17, 2012).

Speaker, *Equity Challenges to Property Tax Assessments in Theory and Practice* (American Property Tax Counsel, San Francisco, CA, Oct. 13, 2012).

Speaker, *The Federal Role in State Tax Reform: Overview of the State Budget Situation and the Federal Policies that Make State Budgets Worse* (AARP National Policy Council, Santa Fe, NM, June 8, 2011).

Panelist, *Shall We Dance? Coordinating Federal and State Tax Policy* (American Bar Association, Section of Taxation, Midyear Meeting, Boca Raton, FL., Jan. 22, 2011).

Panelist, *Taxing Internet Sales: The Battle Between States and Retailers* (Association of American Law School Annual Meeting, San Francisco, CA, Jan. 6, 2011).

Witness, H.R. Subcomm. on Admin. and Commercial Law, Judiciary, *State Tax Apportionment: The Role of Congress in Developing Apportionment Standards*, 111th Cong. (May 6, 2010).

Speaker, *Corporate Income Tax Apportionment*, (New Mexico Tax Research Institute, 7th Annual Tax Policy Conference, Albuquerque, NM, June 21, 2010).

Discussant, *Checking in on Check the Box*, paper by Heather Field (National Tax Association, 101st Annual Conference on Taxation, Philadelphia, PA, Nov. 21, 2008).

Speaker, *Walter Hellerstein: the Annotation is in the Grooves* (National Tax Association, 101st Annual Conference on Taxation, Philadelphia, PA, Nov. 21, 2008) (ceremony awarding Holland Medal to Walter Hellerstein).

Speaker, *Recent Federal Income Tax Developments* (Arizona Society of Certified Public Accountants, 24th Annual Federal Tax Institute Tax Conference, Phoenix, AZ, Nov. 7, 2008).

Paper Presentation, *State Tax Nexus Issues in a Mobile Economy: The Evolving Legal Landscape* (University of Tennessee conference on "Mobility and Tax Policy: Do Yesterday's Taxes Fit Tomorrow's Economy?", Oct. 2-3, 2008.)

Speaker and Panelist, *The Uniform Division of Income for Tax Purposes Act—Past and Present* (Multistate Tax Commission 41st Annual Meeting, Santa Fe, NM, July 31, 2008).

Speaker, *Amazon & Ecommerce: Sales Tax Overview & Potential Implications* (Oppenheimer Conference Call, July 1, 2008).

Speaker and Panelist, *Basic Constitutional Issue in State Taxation* (27th Annual State and Local Tax Conference, National Conference of State Tax Court Judges, Cambridge, Mass., Sept. 28-29, 2007).

Paper Presentation, *The Federal Role in State Taxation: A Normative Approach* (Annual Spring Symposium, National Tax Assn., Washington, D.C., May 19, 2007) (with William Fox, Ph.D.).

Moderator and Speaker, *A Cross-Border Colloquy: What State/Local and International Tax Lawyers Can Learn from Each Other* (American Bar Association, Section of Taxation, Midyear Meeting, Hollywood, Fl., Jan. 19, 2007).

Speaker, *Streamlined Sales Tax: The Fundamentals and the Future* (Annual Sales and Use Tax Symposium, Institute for Professionals in Taxation, Tucson Ariz., Sept. 27, 2006).

Paper Presentation, *The Political Economy of the Streamlined Sales Tax* (Annual Spring Symposium, National Tax Assn., Washington, D.C., May 20, 2005).

Speaker, *The Internet and the American Sales Tax* (University of Arizona Rogers College of Law and the Eller College of Management, Tucson, Ariz., November 3, 2004).

Enrichment Speaker, *Taxing Dotcom Affiliates of Brick and Mortar Retailers: The Personal Jurisdiction Analogue* (University of San Diego School of Law, San Diego, Cal., April 15, 2004).

Paper Presentation, *An Economic Nexus Standard for the 21st Century* (Tax Council Policy Institute Annual Symposium, Washington, D.C., Feb. 27, 2003).

Speaker, *Internet Taxation: Where Are We Now?* (Arizona Society of Certified Public Accountants 18th Annual Tax Conference, Phoenix, Ariz., Nov. 7, 2002).

Moderator, *Factor Presence Nexus or H.R. 2526?* (Multistate Tax Commission, Washington, D.C., Oct. 16 2002).

Presentation, *A Practical Approach to State Tax Administrative Proceedings in Arizona*, in *Practical Approach to Federal and State and Local Tax Litigation* (State Bar of Arizona, Phoenix, Ariz., Mar. 7, 2002).

Invited Participant, *Two-Tier Property Taxation* (Lincoln Inst. Land Policy, Cambridge, Mass., Nov. 2000).

Invited Participant, *Tax Exemptions for Charities: The War Within the States* (Urban Institute, Washington, D.C., June 2000).

SELECTED INSTITUTIONAL SERVICE

Chair, Faculty Status Committee, Fall 2020, Fall 2018

Member, University of Arizona Committee on Promotion and Tenure, 2014-16 (university-wide committee)

Chair, Budget Committee, 2013

Chair, Curriculum Committee, 2012-14

Chair, Peer Review Committee, 2011

Co-Chair, Strategic Planning Committee, 2009-10

Chair, Promotion and Tenure Committee, 2009-10

Member, Institutional Review Committee, 2009-2012 (university-wide committee)

Chair, Faculty Enrichment Committee, 2008-09

Member, Peer Review Committee, 2008-09

Chair, Faculty Retreat Committee, 2006-07

Chair, Awards Committee, 2006-07, 2005-06

Member, Admissions Committee, 2006-07, 2005-06

Advisor, Law School Community Service Bd., 2004-05, 2003-04, 2002-03, 2001-02

Member, Future Planning Committee, 2003-04

Member, Faculty Recruitment Committee, 2002-03, 2001-02

ADMITTED TO PRACTICE LAW

Arizona, 1987 to present.