

No. 25-611

IN THE
Supreme Court of the United States

DELTA AIRLINES, INC.,
Petitioner,
v.

OREGON DEPARTMENT OF REVENUE,
Respondent.

**On Petition for Writ of Certiorari to the
Oregon Supreme Court**

**BRIEF *AMICUS CURIAE* OF
COUNCIL ON STATE TAXATION
IN SUPPORT OF PETITIONER**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICUS CURIAE</i>	1
STATEMENT OF THE CASE	3
ARGUMENT.....	6
I. THE EQUAL PROTECTION CLAUSE PROHIBITS STATES FROM MAKING UNREASONABLE CLASSIFICATIONS...	6
A. The Oregon Supreme Court Errone- ously Applied the Equal Protection Standards.....	7
B. Revenue Generation and Administra- tive Convenience Do Not Justify the Unequal Taxation of Identical Property	10
C. The Ninth Circuit’s Analysis Confirms Inequality of Oregon’s Tax Scheme.....	13
CONCLUSION	13

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Allegheny Pittsburgh Coal Co. v. Cty. Com.</i> , 488 U.S. 336 (1989).....	9, 10
<i>Allied Stores of Ohio v. Bowers</i> , 358 U.S. 522 (1959).....	6, 7, 9
<i>BNSF Ry. Co. v. Or Dep't of Revenue</i> , 965 F. 3d 681 (9th Cir 2020).....	4, 8, 13
<i>Brown-Froman Co. v. Kentucky</i> , 217 U.S. 563 (1910).....	5, 9, 10
<i>Carmichael v. S. Coal & Coke Co.</i> , 301 U.S. 495 (1937).....	12
<i>Delta Air Lines Inc. v.</i> <i>Department of Revenue</i> , 374 Or. 58, 573 P.3d. 856 (July 24, 2025).....	3
<i>Ferrellgas Partners, LP v.</i> <i>Dir., Div. of Taxation</i> , 246 N.J. 454, 251 A.3d 760 (2021), <i>cert. denied</i> , 142 S. Ct. 1440 (2022).....	2
<i>Int'l Bus. Mach. Corp. v.</i> <i>N.Y. Tax Appeals Tribunal</i> , 42 N.Y.S.3d 538 (2024), <i>cert. denied</i> , 145 S. Ct. 1126 (2025).....	2
<i>Lehnhausen v. Lake Shore Auto Parts Co.</i> , 410 U.S. 356 (1973).....	12
<i>Matter of Walt Disney Co. v.</i> <i>Tax Appeals Tribunal</i> , 42 N.Y.S.3d 538 (2024), <i>cert. denied</i> , 145 S. Ct. 1125 (2025).....	2

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Metro. Life Ins. Co. v. Ward</i> , 470 U.S. 869 (1985).....	1
<i>MMN Infrastructure Servs., LLC v.</i> <i>Mich. Dep’t of Treasury</i> , 512 Mich. 594 (2023), <i>cert. denied</i> , 144 S. Ct. 427 (2023).....	2
<i>Nordlinger v. Hahn</i> , 505 U.S. 1 (1992).....	9, 11
<i>Power Co. v. Saunders</i> , 274 U.S. 490 (1927).....	9
<i>Quad Graphics, Inc. v. North Carolina</i> <i>Dep’t of Revenue</i> , 382 N.C. 356 (N.C. 2022), <i>cert. denied</i> , 143 S. Ct. 2638 (2023).....	2
<i>Steiner v. Utah State Tax Comm’n</i> , 2019 Utah 47, 449 P.3d 189 (Sup.Ct), <i>cert. denied</i> , 140 S. Ct. 1114 (2020).....	2
<i>United States of America, et al. v.</i> <i>SuperValu, Inc., United States, ex rel.</i> <i>Thomas Proctor v. Safeway, Inc.</i> , 143 S. Ct. 1391 (2023).....	2
<i>W. & S. Life Ins. Co. v.</i> <i>State Bd. of Equalization</i> , 451 U.S. 648 (1981).....	7
<i>Wash. Bankers Ass’n v. Dep’t of Revenue</i> , <i>et al.</i> , 198 Wash. 2d 418, 495 P.3d 808 (2021) <i>cert. denied</i> , 142 S. Ct. 2828 (2022).....	2

TABLE OF AUTHORITIES—Continued

CONSTITUTION	Page(s)
U.S. Const. amend. XIV	2
U.S. Const. amend. XIV, §1	1-10
Or. Const. art. I, § 32.....	4, 5
Or. Const. art. IX, § 1	4, 5
 STATUTES	
49 U.S.C. §11501(b)(4).....	3
ORS 307.030(2).....	4
ORS 308.505(14)(a)	4
ORS 308.515(1).....	3, 13

INTEREST OF *AMICUS CURIAE*

The Council On State Taxation (“COST”) is a nonprofit trade association based in Washington, D.C. COST was originally formed in 1969 as an advisory committee to the Council of State Chambers of Commerce.¹ Today COST has grown to an independent membership of approximately 500 major corporations engaged in interstate and international business. COST’s long-standing objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

COST members are extensively engaged in interstate and international commerce and share a vital interest in ensuring states do not impede the ability of all businesses engaged in both interstate and international commerce to fairly compete in commerce in any state, including Oregon. To that end, it is important to COST members that states impose their taxes in a manner consistent with the protections afforded them under the United States Constitution. This case addresses the protections provided by Section 1 of the Fourteenth Amendment to United States Constitution.² Specifically, whether there is a rational basis for Oregon to require only a few businesses to pay property tax on their intangible personal property. This case provides the Court with the ideal opportunity to

¹ No counsel for any party authored this brief in whole or in part, and no person or entity aside from amici and its counsel funded its preparation or submission. The parties received timely notice of *amici*’s intent to file this brief.

² The Equal Protection Clause of the Fourteenth Amendment provides a state may not “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, §1. A corporation is a person entitled to the equal protection of the laws. *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 881 n.9 (1985).

clarify for state taxation purposes the proper application of the Fourteenth Amendment's rational basis standard.

COST has a long history of submitting *amicus* briefs to this Court when significant state and local tax issues impacting businesses operating in multistate and international commerce are under consideration. COST has submitted multiple *amicus* briefs in significant state tax cases considered by this Court. Since 2020 COST has filed *amicus* briefs in *Steiner v. Utah State Tax Comm'n*, 2019 Utah 47, 449 P.3d 189 (Sup.Ct.), *cert. denied*, 140 S. Ct. 1114 (2020); *Ferrellgas Partners, LP v. Dir., Div. of Taxation*, 246 N.J. 454, 251 A.3d 760 (2021), *cert. denied*, 142 S. Ct. 1440 (2022); *Wash. Bankers Ass'n v. Dep't of Revenue, et al.*, 198 Wash. 2d 418, 495 P.3d 808 (2021) *cert. denied*, 142 S. Ct. 2828 (2022); *United States of America, et al. v. SuperValu, Inc., United States, ex rel. Thomas Proctor v. Safeway, Inc.*, 143 S. Ct. 1391 (2023); *Quad Graphics, Inc. v. North Carolina Dep't of Revenue*, 382 N.C. 356 (N.C. 2022), *cert. denied*, 143 S. Ct. 2638 (2023); *MMN Infrastructure Servs., LLC v. Mich. Dep't of Treasury*, 512 Mich. 594 (2023), *cert. denied*, 144 S. Ct. 427 (2023); *Int'l Bus. Mach. Corp. v. N.Y. Tax Appeals Tribunal*, 42 N.Y.S.3d 538 (2024), *cert. denied*, 145 S. Ct. 1126 (2025) and *Matter of Walt Disney Co. v. Tax Appeals Tribunal*, 42 N.Y.S.3d 538 (2024), *cert. denied*, 145 S. Ct. 1125 (2025).

As a long-standing business organization representing multijurisdictional taxpayers, COST is uniquely positioned to provide this Court with the analytical underpinnings for why the Oregon Supreme Court failed to properly apply the Fourteenth Amendment's Equal Protection Clause's rational basis standard.

STATEMENT OF THE CASE

This case concerns an adverse decision by the Oregon Supreme Court that upheld the disparate treatment of a select number of Oregon businesses subject to central assessment (state versus local valuation assessment) and are required to calculate property valuations and pay property tax on their intangible property. By contrast, locally assessed taxpayers exclude intangible property from their property valuations and are not required to pay tax on such property. The Oregon Supreme Court reversed the Oregon Tax Court's determination that the tax on Petitioner's intangible values violated the Fourteenth Amendment Equal Protection Clause.³ *Delta Air Lines Inc. v. Department of Revenue*, 374 Or. 58, 573 P.3d. 856 (July 24, 2025).

Oregon, for property tax purposes, requires certain types of business entities to be centrally assessed.⁴ Because Petitioner is an international air transportation company, it is subject to central assessment by the State.⁵ For Oregon property tax purposes, centrally

³ U.S. Const. amend. Art. XIV, §1.

⁴ Central assessment is the assignment of the administrative function for valuing an entity's property to a single state agency rather than multiple local taxing jurisdictions.

⁵ ORS 308.515(1) identifies businesses subject to centrally assessment. Those business types are *railroad transportation*; *railroad switching and terminal*; *electric rail transportation*; *private rail transportation*; air transportation; water transportation upon inland water in Oregon; air or *railway express*; communication; heating; gas; electricity; pipeline; toll bridge; or *private railcars* of all companies not listed if the cars are rented or leased and used for railroad transportation for hire. Importantly, businesses in six of the above statutory categories (emphasis in italics) are prohibited on including their intangible property in the tax base because 49 U.S.C. §11501(b)(4) (the 4-R

assessed business entities are treated as a unit, valuing them as an ongoing business concern. As a result, a centrally assessed business is taxed on the value of its real, personal, and intangible property (including goodwill, customer lists and other intellectual property). By contrast, the vast majority of Oregon businesses are assessed at the local level and do not include intangible property in their property tax base. *See* ORS 308.505(14)(a) (State centrally assessed) and ORS 307.030(2) (locally assessed). For property tax years 2019-2020, Petitioner was assessed on the value of its real, personal and intangible property and paid Oregon property tax on that centrally assessed value. Petitioner timely appealed the assessment to the Oregon Tax Court asserting the taxation of the intangible property violated the Equal Protection Clause of the Fourteenth Amendment and the uniformity clauses of the Oregon Constitution.⁶

The Oregon Tax Court correctly held the taxation of Petitioner's intangible property violated both the Equal Protection Clause of the Fourteenth Amendment and the uniformity clauses of the Oregon Constitution.⁷ The Tax Court concluded the property tax scheme resulted in two classes of intangible property, one class held by those businesses required to be centrally assessed which included intangible property in the property valuation, and the other class held by locally assessed businesses which excluded intangible property from property taxation. Recognizing that the

Act) prohibits the imposition of discriminatory taxes on rail carriers. *BNSF Ry. Co. v. Or Dep't of Revenue*, 965 F.3d 681 (9th Cir 2020).

⁶ Or. Const. art. I, section 32 and article IX, section 1 of the Oregon Constitution.

⁷ Pet. App. 118a.

property tax scheme created two classes of intangible property, the Tax Court addressed whether the tax classifications had a rational basis consistent with Equal Protection Clause standards, *e.g.* the classifications are based on genuine differences, and those differences bear a reasonable relationship to the legislative purpose. The Tax Court found there was no genuine difference between the intangible property of the statutory listed centrally assessed transportation businesses and locally assessed transportation businesses. Additionally, the Tax Court found there was no genuine difference between intangible property used or held by the centrally assessed businesses and any other businesses that operate in Oregon over a large geographic area. Therefore, the Tax Court held there was no genuine difference between a centrally assessed entity's use of intangible property and a locally assessed business's use of intangible property that could justify unequal taxation. The Tax Court concluded that the inclusion of the Petitioner's intangible property in its property tax valuation violated both the Equal Protection Clause and the Oregon uniformity clauses.

The Oregon Supreme Court disagreed and reversed both the Equal Protection and Oregon uniformity clause holdings of the Tax Court. The Oregon Supreme Court concluded the Tax Court wrongly treated "genuine differences" in the intangible property as a prerequisite for determining whether there was a rational basis for the differing tax schemes. The Oregon Supreme Court's position was that a rational basis review does not require identical treatment of all types of property. The Court analyzed the classification under both Oregon's Equal Privileges and Immunities Clause and the Fourteenth Amendment's Equal Protection Clause and concluded that both of

those provisions only require that the classification be rationally related to a legitimate governmental purpose. In applying the analysis, the Oregon Supreme Court concluded that the State Legislature’s decision to tax intangible property of centrally assessed businesses (but not locally assessed businesses) was rationally related to legitimate governmental purposes of: (1) raising revenue; (2) promoting administrative efficiency; (3) developing expertise in valuing complex, multi-jurisdictional businesses; and (4) balancing revenue potential against limited resources. Pet. App. 4a. Thus, it held there was a rational basis for including intangible property only in centrally assessed taxpayers’ property tax base, while all other taxpayers were not subject to taxation on the same class of property.

ARGUMENT

I. THE EQUAL PROTECTION CLAUSE PROHIBITS STATES FROM MAKING UNREASONABLE CLASSIFICATIONS.

The Fourteenth Amendment’s Equal Protection Clause provides “nor [shall any state] deny to any person within its jurisdiction the equal protection of the laws”⁸ Specifically, the Equal Protection Clause is construed to prohibit states from making unreasonable classifications. Taxation is a fundamental government power of the states. Although states have a fundamental right to impose taxes, that taxing power “shall not be so exercised as to deny any equal protection of the law.” *Brown-Forman Co. v. Kentucky*, 217 U.S. 563, 572 (1910). Thus, states exercising their taxing power are subject to Equal Protection Clause requirements. *Allied Stores of Ohio v. Bowers*, 358 U.S.

⁸ U.S. Const. amend. XIV, §1.

522 (1959). While this Court recognizes that states, for tax purposes, may have broad discretion in classifying property for taxation, it has set forth two standards to ensure the classifications comport with the protections afforded by the Equal Protection Clause. The two standards that must be satisfied are: (1) “the selection or classification is neither capricious nor arbitrary and (2) [it] rests upon some reasonable consideration of difference or policy. . .” *Id.* at 573. Specifically, does the challenged tax have a legitimate purpose and was it reasonable for law makers to believe that use of the challenged classification would promote that purpose. *W. & S. Life Ins. Co. v. State Bd. of Equalization*, 451 U.S. 648 (1981). The Oregon Supreme Court erroneously applied these standards when it concluded that the taxation of intangibles only in connection with centrally assessed businesses did not violate the Equal Protection Clause.

A. The Oregon Supreme Court Erroneously Applied the Equal Protection Standards.

Oregon has inequitably created two classes of property that are identical in all relevant respects, except that only one group of taxpayers is required to include their intangible property in the property tax base. The intangible property of both centrally assessed and locally assessed taxpayers is identical in all relevant respects. However, only centrally assessed taxpayers subject to assessment by the state as an administrative function—who represent approximately 0.1% of Oregon’s businesses—are required to include the value of the intangible property in their property tax base.⁹ The intangible property in both classes—

⁹ For tax years 2017-2018, the classification of business entities including the now excluded railroad entities was

goodwill, customer lists, trademarks, patents, franchises, assembled workforce, and other intellectual property—is the same in character, use, location, and economic function. The decision to only tax intangible property for centrally assessed businesses: (1) does not relate to differences in the property itself; (2) does not relate to differences in use, character, or situs of the property; (3) does not reflect historic or traditional tax categories; and (4) does not further any rational tax-policy goal. The Oregon Supreme Court has erroneously applied this Court’s Equal Protection Clause rational basis test and wrongfully concluded there is a meaningful distinction between the taxed and untaxed intangible property because the differences between centrally and locally assessed businesses were rationally related to a legitimate governmental purpose.

The Oregon Supreme Court’s position is set forth as follows:

The [S]tate has a legitimate purpose in obtaining revenue, and the taxation of the intangible property is rationally related to that purpose. The legislature’s decision to limit the taxation of intangible property to centrally assessed businesses rationally promotes various legitimate purposes including administrative efficiency, developing and keeping expertise in various such businesses, promoting fairness among the centrally assessed taxpayers, and balancing the expected revenue return against limited department resources. Pet. App. 4a.

“approximately 513 companies compared to more than 400,000 locally assessed companies.” *BNSF Ry. Co. v. OR Dep’t of Revenue*, 965 F.3d 681 at 684 n.1 (9th Cir. 2020).

The Equal Protection Clause forbids differential tax treatment of identical property absent a rational basis tied to legitimate purposes. There must be a rational relationship between the classification and the goal of the tax scheme. This Court has stated that when a state draws a tax classification, the distinctions must be at least rationally related to legitimate governmental objectives. *Nordlinger v. Hahn*, 505 U.S. 1 (1992). Additionally, this Court has recognized that the classification cannot be arbitrary and must be based upon a fair and substantial relation to the legislation.¹⁰ Under this Court's precedents, Oregon is prohibited from treating taxpayers differently who are for all purposes similar.

This Court has held that a state may divide property into classes and assign to each class a different tax burden. *Id.* at 11. However, it may only do so as long as those divisions and burdens are neither capricious nor arbitrary and rest upon some reasonable consideration of difference or policy. *Allegheny Pittsburgh Coal Co. v. Cty. Com.*, 488 U.S. 336, 344 (1989) (citing *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526-27 (1959) and *Brown-Forman Co. v. Kentucky*, 217 U.S. 563, 573 (1910)). In *Allegheny Pittsburgh Coal*, the West Virginia assessors, contrary to that State's law, primarily used the last sales price of the property to

¹⁰ This Court in *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 527 (1958), concluded that "[t]he State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary." See also, *Power Co. v. Saunders*, 274 U.S. 490, 493-94 (1927), that the equal protection requires "that the classification be not arbitrary but based on a real and substantial differences having a reasonable relation to the subject to the particular legislation" a valid classification "must rest on the differentiation pertinent to the subject in respect to which the classification is made."

determine assessed value, rather than current fair market value. Based on the assessors' method to determine assessed value, recent purchases of real property were valued significantly higher than property that had been purchased years before. This Court held that a tax scheme that valued properties with recent sales using only the purchase price and only made minor adjustments in value if there was no recent sale created "gross disparities" and denied protection guaranteed to taxpayers under the Equal Protection Clause of the Fourteenth Amendment. *Id* at 338.

The issue in this case aligns with this Court's analysis in *Allegheny Pittsburgh Coal*. There is no "genuine difference" between the intangible property of a locally assessed business and that of a centrally assessed business. The Oregon Supreme Court in concluding that a "genuine difference" is not a criteria but rather a conclusion that results from determining if there is a rational basis for the distinction turns this Court's Equal Protection Clause jurisprudence on its head. The distinction fashioned by the Oregon Supreme Court creates "gross disparities" between two identical classes of business, with one class subject to including intangibles in the property tax base while the other does not; this "gross disparity" violates the Equal Protection Clause.

B. Revenue Generation and Administrative Convenience Do Not Justify the Unequal Taxation of Identical Property.

This Court has established a two-part test for determining if a tax structure violates equal protection afforded to a business. *Brown-Forman*, 217 U.S. at 563. First, the challenged tax must have a legitimate purpose; and second, it must be reasonable for the legislature to believe that use of the challenged

classification promotes that purpose. The Oregon Supreme Court's principal justification for the distinction between centrally assessed businesses and those that are locally assessed relies on the generation of revenue and the belief that the state can more efficiently impose its property tax on the value of intangible property for centrally assessed businesses than it can for locally assessed businesses. Pet. App 4a.

The Oregon Supreme Court found the generation of revenue to be a legitimate governmental purpose. Building off that purpose, the Oregon Supreme Court determined the taxation of intangible property only in relation to centrally assessed businesses furthers that goal of obtaining such revenue. This Court has stated the Equal Protection Clause standards are satisfied only if the different treatment rationally furthers a legitimate state interest and there is a plausible policy reason for the classification. The relationship of the classification to its goal cannot be "so attenuated as to render the distinction arbitrary or irrational." *Nordlinger*, 505 U.S. at 11.

The generation of revenue may be a legitimate government purpose, and the taxation of intangible property may further that purpose, but there is no reasonable basis to only tax the intangible property of centrally assessed entities and exempt the intangible property of locally assessed entities, especially when air transportation businesses like the Petitioner compete with other transportation businesses that are locally assessed. Additionally, if the generation of revenue is the governmental purpose there is no reasonable basis for only centrally assessed business entities, that represent 0.1% of all Oregon businesses,

to pay property taxes on their intangible property.¹¹ Thus, the relationship between the classification of taxpayers and the revenue goal is arbitrary and irrational. To survive Equal Protection Clause scrutiny, it is the distinction between the classification which must advance a legitimate government purpose. The Oregon Supreme Court's rationale for upholding the classification is not supported by this Court's decisions and should not survive this Court's Equal Protection Clause scrutiny.

Additionally, the Oregon Supreme Court justifies the central assessment classification based on a perceived legislative intent to have a single state agency develop an expertise in valuing intangible property in order to promote "efficiency and fairness" in taxation.¹² This justification for the disparate taxation of intangible property is also not supported by this Court's Equal Protection Clause jurisprudence. If the legislative intent was to promote "efficiency and fairness" in taxation, why would that intent not apply to all businesses? Ordinary administrative considerations may justify a tax-related distinction. *Carmichael v. S. Coal & Coke Co.*, 301 U.S. 495 (1937); and *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973). However, choosing to tax the intangible property of only a select few taxpayers does not involve any legitimate administrative considerations; it will always be more "efficient"—but certainly not fair—to single out only a few taxpayers' property for taxation (and assign the responsibility for doing so to a state agency). The Oregon Supreme Court conflates the rationale for adopting a central assessment tax system

¹¹ Footnote 9, *supra*.

¹² Pet. App. 39a.

with the decision to selectively tax intangible property only for those businesses centrally assessed. While a central assessment system may arguably promote efficiency when the tangible property of certain taxpayers operates over multiple jurisdictions, it does not justify the unequal treatment of including intangible property in the property tax base only for centrally assessed taxpayers. This Court should reject this type of tax classification as arbitrary.

C. The Ninth Circuit’s Analysis Confirms Inequality of Oregon’s Tax Scheme.

The Ninth Circuit Court of Appeals has addressed the Oregon central assessment tax structure in the context of railroad companies. Railroad companies are one of the enumerated businesses subject to central assessment. ORS 308.515(1). In, *BNSF Ry. Co. v. Or. Dep’t of Revenue*, 965 F.3d 681 (9th Cir. 2020), the Ninth Circuit examined the exact statutory structure at issue in this matter and applying standards similar to this Court’s Equal Protection Clause tests held there was “no logical relationship” between the differential treatment of intangible property. *Id.* at 693. The Oregon Supreme Court’s conclusion that there is a rational reason for taxing the intangible property held by centrally assessed businesses while exempting the intangible property held by locally assessed businesses ignores this Ninth Circuit precedent.

CONCLUSION

This Court has held that the Equal Protection Clause prohibits states from imposing tax classifications that are arbitrary, capricious, or lacking a rational relationship to legitimate governmental objectives. Unfortunately, and unconstitutionally, Oregon’s property tax scheme does precisely that. By

taxing intangible property only when held by centrally assessed businesses—while exempting identical intangible property held by all other businesses that are locally assessed—the State has created a gross disparity that cannot be justified under this Court’s Equal Protection jurisprudence. Revenue generation and administrative convenience, standing alone, should not permit the unequal taxation of property that is identical in character, use, and economic function. This case presents this Court with opportunity to reaffirm the application of the Equal Protection Clause standards in the state taxation context to ensure states do not undermine constitutional guarantees through unequal and selective taxation. For this reason, this Court should grant review of this Petition for Writ of Certiorari and reverse the judgment of the Oregon Supreme Court.

Respectfully submitted,

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