



# This Week in State Tax (TWIST)

September 8, 2025



## North Carolina: High court holds OAH cannot hear constitutional matter; taxpayer stuck

The North Carolina Supreme Court has ruled that the state Office of Administrative Hearings (OAH) lacks subject-matter jurisdiction over constitutional “as-applied” challenges. The underlying dispute in this case was the constitutionality of a law that allowed a deduction from the corporate franchise tax base only for receivables owed to the taxpayer by related corporations doing business in North Carolina. The effect of the law was to require an addback of receivables to the franchise tax base when the debtor affiliate was not doing business in North Carolina and was not subject to franchise tax. The taxpayer alleged that denying a deduction for receivables from affiliates not doing business in North Carolina discriminated against interstate commerce in violation of the dormant Commerce Clause. The OAH held in favor of the taxpayer. The Department of Revenue then appealed to the North Carolina Business Court which held that the OAH did not have jurisdiction to determine U.S. Constitutional matters. The substantive arguments were not addressed. The taxpayer appealed Business Court decision on jurisdiction to the North Carolina Supreme Court.

The primary question before the court was the interpretation of N.C.G.S. § 105-241.17(2)-(3), which states that a civil claim can be filed only after the taxpayer commences a case before the OAH *and* the OAH dismisses the case “for lack of jurisdiction because the sole issue is the constitutionality of the statute and not the application of a statute.” Further, N.C.G.S. § 1-267.1, provides that “[a]ny action that is a facial challenge to the validity of an act of the General Assembly shall be” heard by a three-judge panel of the Superior Court of Wake County. In its initial decision, the OAH had interpreted these provisions as prohibiting the OAH from hearing facial constitutional challenges (i.e., alleging a statute can never be applied constitutionally) but not *as-applied* challenges (i.e., asserting a statute cannot be constitutionally applied to the party disputing its validity). The Supreme Court rejected this reasoning, holding that “both facial and as-applied challenges are mechanisms for disputing the constitutionality of legislation.” The court also noted that the use of the term “facial challenge” in N.C.G.S. § 1-267.1, “suggests that lawmakers did not intend to restrict N.C.G.S. § 105-241.17 to facial challenges.” The court further held that allowing the OAH to consider as-applied constitutional challenges would ignore “foundational principles of administrative law” and would raise serious separation-of-powers concerns under the North Carolina constitution.

Taxpayers should note that, although the OAH is prohibited from hearing constitutional challenges to tax statutes, a taxpayer is still required to file the challenge with the OAH. Under the scheme laid out in N.C.G.S. § 105-241.17, a constitutional challenge is ripe for adjudication only after the matter has been both filed with and dismissed by the OAH. Please contact [Nikki Emanuel Jarrell](#) with questions about [N.C. Dep’t of Revenue v. Philip Morris USA, Inc.](#)

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