

## **JOHN A. SWAIN**

University of Arizona, Rogers College of Law  
1201 E. Speedway Blvd., Tucson, Arizona 85721-0176  
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*john.swain@law.arizona.edu*

### **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 present)

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

#### *L.L.M. Tax Faculty*

The University of Alabama School of Law  
(2009 to present)

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

#### *Associate Professor of Law*

The University of Arizona  
James E. Rogers College of Law  
(2001-02 to 2008-09).

#### *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).

## **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, 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, 1<sup>st</sup> 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, 20<sup>th</sup> 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 2017 rev.) (co-author, with Walter Hellerstein).

STATE AND LOCAL TAXATION: CASES AND MATERIALS (10th ed., West 2013) (co-author, with Walter Hellerstein, Kirk Stark, & Joan Youngman).

THE STREAMLINED SALES AND USE TAX (co-author, with Walter Hellerstein) (4<sup>th</sup> 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

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

*Platform*, 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 STATE 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

*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, 111<sup>th</sup> 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, *Federal Limits on State Taxation* (Portland Tax Forum, Portland, OR, January 18, 2018).

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

Speaker, *Revisiting Quill: Where We Are Now* (99<sup>th</sup> 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* (38<sup>th</sup> 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* (37<sup>th</sup> 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* (96<sup>th</sup> 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 5<sup>th</sup> 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*, 111<sup>th</sup> Cong. (May 6, 2010).

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

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

Speaker, *Walter Hellerstein: the Annotation is in the Grooves* (National Tax Association, 101<sup>st</sup> 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, 24<sup>th</sup> 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 41<sup>st</sup> 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* (27<sup>th</sup> 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**

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.