Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

Syllabus

## MEADWESTVACO CORP., SUCCESSOR IN INTEREST TO MEAD CORP. *v.* ILLINOIS DEPARTMENT OF REVENUE ET AL.

CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

No. 06–1413. Argued January 16, 2008—Decided April 15, 2008

A State may tax an apportioned share of the value generated by a multistate enterprise's intrastate and extrastate activities that form part of a "'unitary business.'" *Hunt-Wesson, Inc.* v. *Franchise Tax Bd. of Cal.*, 528 U. S. 458, 460. Illinois taxed a capital gain realized by Mead, an Ohio corporation that is a wholly owned subsidiary of petitioner, when Mead sold its Lexis business division. Mead paid the tax and sued in state court. The trial court found that Lexis and Mead were not unitary because they were not functionally integrated or centrally managed and enjoyed no economies of scale. It nevertheless concluded that Illinois could tax an apportioned share of Mead's capital gain because Lexis served an operational purpose in Mead's business. Affirming, the State Appellate Court found that Lexis served an operational function in Mead's business and thus did not address whether Mead and Lexis formed a unitary business.

Held:

1. The state courts erred in considering whether Lexis served an "operational purpose" in Mead's business after determining that Lexis and Mead were not unitary. Pp. 6–13.

(a) The Commerce and Due Process Clauses impose distinct but parallel limitations on a State's power to tax out-of-state activities, and each subsumes the "broad inquiry" "'whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state,'" *ASARCO Inc.* v. *Idaho Tax Comm'n*, 458 U. S. 307, 315. Because the taxpayer here did business in the taxing State, the inquiry shifts from whether the State may tax to what it may tax. Under the unitary business principle developed to answer that question, a State need not "isolate the intrastate income-producing activities from the rest of the business" but "may tax an apportioned sum of the corporation's multistate business if the business is unitary." *Allied-Signal, Inc.* v. *Director, Div. of Taxation*, 504 U. S. 768, 772. Pp. 6–8.

(b) To address the problem arising from the emergence of multistate business enterprises such as railroad and telegraph companies—namely, that a State could not tax its fair share of such a business' value by simply taxing the capital within its borders—the unitary business principle shifted the constitutional inquiry from the niceties of geographic accounting to the determination of a taxpayer's business unit. If the value the State wished to tax derived from a "unitary business" operated within and without the State, the State could tax an apportioned share of that business' value instead of isolating the value attributable to the intrastate operation. *E.g., Exxon Corp.* v. *Department of Revenue of Wis.*, 447 U. S. 207, 223. But if the value derived from a "discrete business enterprise," *Mobil Oil Corp.* v. *Commissioner of Taxes of Vt.*, 445 U. S. 425, 439, the State could not tax even an apportioned share. *E.g., Container Corp. of America* v. *Franchise Tax Bd.*, 463 U. S. 159, 165–166. This principle was extended to a multistate business that lacked the "physical unity" of wires or rails but exhibited the "same unity in the use of the entire property for the specific purpose," with "the same elements of value arising from such use," *Adams Express Co.* v. *Ohio*, 165 U. S. 194, 221; and it has justified apportioned taxation of net income, dividends, capital gain, and other intangibles. Confronting the problem of how to determine exactly when a business is unitary, this Court found in *Allied-Signal* that the "principle is not so inflexible that as new [finance] methods . . . and new [business] forms . . . evolve it cannot be modified or supplemented where appropriate," 504 U. S., at 786, and explained that situations could occur in which apportionment might be constitutional even though "the payee and the payor [were] not . . . engaged in the same unitary business," *id.,* at 787. In that context, the Court observed that an asset could form part of a taxpayer's unitary business if it served an "operational rather than an investment function" in the business, *ibid.;* and noted that *Container Corp.*, *supra,* at 180, n. 19, made the same point. Pp. 8–11.

(c) Thus, the "operational function" references in *Container Corp.* and *Allied-Signal* were not intended to modify the unitary business principle by adding a new apportionment ground. The operational function concept simply recognizes that an asset can be a part of a taxpayer's unitary business even without a "unitary relationship" between the "payor and payee." In *Allied-Signal* and in *Corn Products*

*Co.* v. *Commissioner*, 350 U. S. 46, the conclusion that an asset served an operational function was merely instrumental to the constitutionally relevant conclusion that the asset was a unitary part of the business conducted in the taxing State rather than a discrete asset to which the State had no claim. *Container Corp.* and *Allied-Signal* did not announce a new ground for constitutional apportionment, and the Illinois Appellate Court erred in concluding otherwise. Here, where the asset is another business, a unitary relationship's "hallmarks" are functional integration, centralized management, and economies of scale. See *Mobil Oil Corp.*, *supra*, at 438. The trial court found each hallmark lacking in finding that Lexis was not a unitary part of Mead's business. However, the appellate court made no such determination. Relying on its operational function test, it reserved the unitary business question, which it may take up on remand. Pp. 11–13.

2. Because the alternative ground for affirmance urged by the State and its *amici*—that the record amply demonstrates that Lexis did substantial business in Illinois and that Lexis' own contacts with the State suffice to justify the apportionment of Mead's capital gain—was neither raised nor passed upon in the state courts, it will not be addressed here. The case for restraint is particularly compelling here, since the question may impact other jurisdictions' laws. Pp. 13–14.

371 Ill. App. 3d 108, 861 N. E. 2d 1131, vacated and remanded.

ALITO, J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion.