fuel stored temporarily in the state prior to loading on aircraft for consumption in interstate flights.[1110]

When "there is no dispute that the taxpayer has done some business in the taxing State, the inquiry shifts from whether the State may tax to what it may tax. To answer that question, [the Court has] developed the unitary business principle. Under that principle, 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. The court must determine whether intrastate and extrastate activities formed part of a single unitary business, or whether the out-of-state values that the State seeks to tax derive[d] from unrelated business activity which constitutes a discrete business enterprise. . . . If the value the State wishe[s] to tax derive[s] from a 'unitary business' operated within and without the State, the State [may] tax an apportioned share of the value of that business instead of isolating the value attributable to the operation of the business within the State. Conversely, if the value the State wished to tax derived from a discrete business enterprise, then the State could not tax even an apportioned share of that value." [1111] But, even when there is a unitary business, "[t]he Due Process and Commerce Clauses of the Constitution do not allow a State to tax income arising out of interstate activities—even on a proportional basis—unless there is a 'minimal connection' or 'nexus' between the interstate activities and the taxing State and 'a rational relationship between the income attributed to the State and the intrastate values of the enterprise.'" [1112]

Apportionment.—This requirement is of long standing,[1113] but its importance has broadened as the scope of the states' taxing powers has enlarged. It is concerned with what formulas the states must use to claim a share of a multistate business's tax base for the taxing state, when the business carries on a single integrated enterprise both within and without the state. A state may not exact from

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[1110] United Air Lines v. Mahin, 410 U.S. 623 (1973).

[1111] Meadwestvaco Corp. v. Illinois Dept. of Revenue, 128 S. Ct. 1498, 1505–06 (2008) (citations and internal quotation marks omitted). The holding of this case was that the concept of "operational function," which the Court had introduced in prior cases, was "not intended to modify the unitary business principle by adding a new ground for apportionment." Id. at 1507–08. In other words, the Court declined to adopt a basis upon which a state could tax a non-unitary business.

[1112] Container Corp. of America v. Franchise Tax Bd., 463 U.S. 159, 165–66 (1983) (internal quotation marks omitted). *See also* ASARCO Inc. v. Idaho State Tax Comm'n, 458 U.S. 307, 316–17 (1982); Hunt-Wesson, Inc. v. Franchise Tax Bd. of Cal., 528 U.S. 58 (2000) (interest deduction not properly apportioned between unitary and nonunitary business).

[1113] *E.g.*, Pullman's Palace Car Co. v. Pennsylvania, 141 U.S. 18, 26 (1891); Maine v. Grand Trunk Ry., 142 U.S. 217, 278 (1891).