STATE RESIDENT TAX CREDITS AFTER THE U.S. SUPREME COURT'S *WYNNE* DECISION

ABA JOINT FALL CLE MEETING

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The Commerce Clause

- Article I, of 8, clause 3 of U.S. Constitution: The Commerce Clause
  - Grants Congress power "to regulate commerce … among the several states"
  - Initial idea
    - Avoid "Balkanization" that plagued relations among Colonies and under Articles of Confederation

The "Negative" or "Dormant Commerce Clause"

- Though framed as positive grant of power to Congress, Court has "consistently held this language to contain a further, negative command."
- "Prohibiting certain state taxation even when Congress has failed to legislate on the subject" (*Jefferson Lines*, 1995)

State Taxation of Residents and Nonresidents

- States generally tax their own residents on all income, regardless of source
  - Residents are taxed on <u>one thing</u>
- Nonresidents only taxed on income from in-state sources
  - Wages for in-state services
  - Income from in-state business
  - Income from in-state property

Resident Credits

- Most states allow residents a credit for taxes paid to other states, but thought it was as a policy accommodation, not a constitutional requirement. *Chickasaw Nation*, 515 U. S., at 463, n. 12.
- States credit systems are not absolute:
  - No credit for foreign taxes paid;
  - Not all states grant credit for taxes paid by at entity level;
  - Not all states grant credits for local taxes;
  - No states allow income tax credits for gross receipts taxes, B&O taxes, margins taxes;
  - May limit tax credit to state's effective tax rate on income.

Resident Credits – Other Limitations

- Different sourcing rules
  - Example: CT will only give credit for taxes paid to other states on income from sources in that state — determined under CT's sourcing rules!
  - Convenience Rule Problem
- "Unearned" or "Non-Source" Income
  - If two states impose tax on a taxpayer's intangible income (not source able anywhere), usually no resident credits
  - CT/NY dual residency: prime example
  - New Jersey is much nicer!

Wynne Background – MD Rules

- MD residents (like NY residents) pay tax on their worldwide income
- MD personal income tax has two components: (1) state and (2) county
- Nonresidents only pay tax on sourced income, but they pay BOTH the state and county tax (called "special nonresident tax")
- Residents only allowed credit against state portion of tax

Wynne Background – Facts

- MD residents who held stock in an S crop that operated and filed returns in 39 other states
- Reported flow-through income from the S crop on MD income tax returns
- Claimed resident tax credit (against both the state and county components) for taxes paid to other states
- The MD State Comptroller disallowed credit against county component

Wynne Background

- So Wines pay tax to MD as residents (say 6%) and rate includes a county component (say 1%)
- They also pay tax in CA at 13% rate
- MD will allow an offset for CA taxes paid, but only against the 6% state tax; 1% county tax can NEVER be offset
- Constitutional dispute: Is that legitimate? Can a state tax its residents on all income and NOT provide full credit for taxes paid to other states?

Wynne Background

- Stated another way …
  - Are resident credits a creature of legislative grace and good tax policy?

    — or —

  - Are resident credits constitutionally required?

Wynne Tax Court Decision

- Affirmed the Hearings and Appeals Section's ruling which held that the no credit was allowed against the county component of MD's income tax
- Tax Court reversed by Circuit Court for Howard County, which held that MD's tax scheme violated the Commerce Clause

Wynne
MD Court of Appeals Decision

- MD's high court affirmed the Circuit Court
- Evaluated MD's tax under *Complete Auto's* four-part test
  1. Substantial nexus with taxing state
  2. Fairly apportioned
  3. Doesn't discriminate against interstate commerce
  4. Fairly related to services provided by the state
- Held that MD's tax violated #2 and #3

Supreme Court Holding *Maryland Comptroller of Treasury v. Wynne*, 135 S. Ct. 1787 (2015)

- Maryland's income tax scheme unconstitutionally discriminates against interstate commerce because it fails the internal consistency test.
- Maryland's tax scheme operates like a tariff "the paradigmatic example of a law discriminating against interstate commerce"

Supreme Court Scorecard

- Majority: 5 Justices
  - Alito, Roberts, Kennedy, Sotamayer, Breyer
- Dissent: 4 Justices
  - Ginsberg, Scalia, Kagan
  - Thomas — separate dissent

Oral Argument– Supreme Court

During Oral argument, Chief Justice John Roberts observed that:

"*if each State did what we're talking about, people who work in one State and live in another would pay higher taxes overall than people who live within one State and work in the same State*."

The Internal Consistency Test

- Justice Roberts was talking about the "Internal Consistency Test
  - The Commerce Clause requires that taxes on interstate commerce be nondiscriminatory and fairly apportioned.
- This test is designed to allow us to distinguish between
  1. a tax structure that is inherently discriminatory (bad); and
  2. one that might result in double taxes only as a result of two nondiscriminatory state schemes (OK)
- Past cases may have suggested that the Commerce Clause was N/A to individual income taxes; the Court laid that to waste

The Internal Consistency Test

The test: whether interstate and intrastate commerce would be taxed equally if every state were to adopt the precise tax scheme at issue

- State A imposes a 1.25% tax on all residents, regardless of where earned
- State A also imposes a tax on nonresidents' source income at 1.25%
- No resident credits
- April and Bob live next door to each other in State A; Bob's business located in State B; April's is all in State A
- To apply the I/C test, we have to assume all states have the State A scheme.
- State A fails the test!!

	April	Bob
State A Tax	1.25%	1.25%
Hypo State B Tax	0	1.25%
Total Bill	1.25%	2.5%

Questions

Could the MD structure be cured in order to pass the Internal Consistency Test by allowing a resident credit?

- State A imposes a 1.25% tax on all residents, regardless of where earned
- State A also imposes a tax on nonresidents' source income at 1.25%
- *State A provides resident credit for taxes paid to other states on sourced income*
- April and Bob live next door to each other in State A; Bob's business is located in State B; April's is all in State A

	April	Bob
State A Tax	1.25%	0
Hypo State B Tax	0	1.25%
Total Bill	1.25%	1.25%

Questions

Could the MD structure be cured in order to pass the Internal Consistency Test by not having the Counties tax nonresidents?

- State A imposes a 1.25% tax on all residents, regardless of where earned
- *State A does not tax nonresidents*
- No resident credits
- April and Bob live next door to each other in State A; Bob's business is located in State B; April's is all in State A

	April	Bob
State A Tax	1.25%	1.25%
Hypo State B Tax	0	0
Total Bill	1.25%	1.25%

- But is this fairly apportioned – externally consistent?

The Internal Consistency Test *Be Careful*

Don't get lost in the differences between the rules in two states

- State A imposes a 1.25% tax on all residents, regardless of where earned.
- *State A does not tax nonresidents and provides no resident credits (which is internally consistent per previous slide)*
- But assume State B is a *real state*; and it *does* tax nonresidents
- April and Bob live next door to each other in State A; Bob's business is located in State B; April's is all in State A

	April	Bob
State A Tax	1.25%	1.25%
Actual State B Tax	0	1.25%
Total Bill	1.25%	2.5%

- This stinks for Bob. And there is double tax. But NOT because State A's scheme fails the test; only because of what State B is doing

Questions

- ***Are resident credits now constitutionally required?***
  - Per majority, yes
  - But only if states also tax nonresidents
  - Dissenters took a different view, but don't expect this to change

Questions

- ***What state resident credit schemes are or could be directly impacted by the decision?***
  - <u>States</u>
    - Wisconsin, North Carolina, Tennessee, Massachusetts
  - <u>Local Jurisdictions</u>
    - NYC, Philadelphia, Cleveland, Detroit, Kansas City, St. Louis, Wilmington (DE), Indiana's counties

IMPACT IN PHILADELPHIA AND PENNSYLVANIA

No Credit for PA Local Tax Paid

- *Soma v. Commonwealth of Pennsylvania*, 405 A.2d 1323 (Pa. Common. 1979)
- *Soma* questioned the constitutionality of allowing a credit for taxes paid to other states but not for taxes paid to PA local jurisdictions.
- The court held that such a tax scheme was constitutional and changing the scheme required a legislative remedy, not a judicial remedy.

The Philadelphia Tax Nuance

- Act 50 of 1998 established that taxpayers who reside in a non-Philadelphia school district that levies the earned income/net profits tax but work in Philadelphia are entitled to a credit against PA tax. 53 P.S. § 8713(b).
- PIT-00-074, the Dept. of Revenue reiterated the validity of the credit but also explained that without school district referendums to impose the tax, no credit can be allowed.
- No school districts have passed referendums to impose the tax.
- Thus, the tax credit cannot be utilized at this time.

Hypothetical

- Query: whether 53 P.S. § 8713(b) violates the Uniformity Clause of the PA Constitution?
- Two residents of Lower Merion Township, one works in Philadelphia, the other works in West Conshohocken.
- If Lower Merion School District were to impose a tax, the Lower Merion resident that works in Philadelphia would receive the credit but, not the resident that works in West Conshohocken.

No Credit for Foreign Taxes Paid

- Before 2014, a PA resident taxpayer was entitled to a credit against PA personal income tax due for the amount of any income tax imposed on him by another state upon income that is also taxable in PA. 72 P.S. § 7314.
- The term "state" for this purpose included a foreign country. 72 P.S. § 7314(t).
- Act 52 of 2013, however, repealed the credit for foreign taxes paid effective for tax year 2014 and thereafter.

No Credit Against Philadelphia's Tax

- Philadelphia imposes a tax upon salaries, wages, commissions, other compensation and net profits. Phyla. Code §§ 19-1500, *et seq.*
- All compensation and net profits of residents are taxed wherever earned. Phyla. Code §§ 19-1502(a), 19-2800. Philadelphia residents are also taxed upon their unearned income through the SIT. 53 P.S. §16101; Phyla. Code §19-1804.
- Nonresidents are only taxed upon compensation and net profits earned in Philadelphia. Phyla. Code §§ 19-1502(b).
- The Sterling Act (the enabling Act) (Act of August 5, 1932, P.L. 45, 53 P.S. § 15971) and Philadelphia Wage Tax Ordinance, however, are SILENT regarding credits against Philadelphia tax for other like taxes paid to other states or political subdivisions in other states.
- Thus, Philadelphia does not allow a credit against the Philadelphia wage/net profits tax for similar taxes paid to other states or political subdivisions.

Compare with Local Tax Enabling Act

- 53 P.S. § 6924.317 – which does not apply to Philadelphia
- "Payment of any tax on income to any State other than Pennsylvania or to any political subdivision located in Pennsylvania shall, to the extent that such income includes salaries, wages, commissions, or other compensation or net profits of businesses, professions or other activities but in such proportions as hereinafter set forth, be credited to and allowed as a deduction from the liability of such person for any other tax on salaries, wages, commissions, other compensation or net profits of businesses, professions or other activities imposed by any political subdivision of this Commonwealth under the authority of this chapter."

Wynne's Impact on Current PA and Philadelphia Tax Schemes

- Hypothetical -- Imagine a Philadelphia and PA resident Taxpayer earns income in Wilmington, Delaware.
- Current law:
  - Taxpayer will initially be liable for 4 taxes: 1) PA level tax; 2) Philadelphia level tax; 3) DE level tax; 4) Wilmington level tax
  - Taxpayer will receive a credit against PA level tax for income taxes paid to DE
  - Taxpayer will NOT receive a credit against PA level tax for income taxes paid to Wilmington
  - Taxpayer will NOT receive a credit against Philadelphia level tax for income taxes paid either to DE or to Wilmington
- Current law is unconstitutional, see *Wynne*

Wynne's Impact upon Current PA and Philadelphia Tax Schemes

- The Potential Remedies:

  1) Income taxes paid to another State and local political subdivision are applied against both PA and Philadelphia level taxes; or

  2) Taxes paid to another State is applied directly against PA level tax, while taxes paid to another State's local political subdivision are applied directly against Philadelphia tax; or

  3) Taxes paid to another State and local political subdivision are *first* applied against PA level tax; any excess is then applied against Philadelphia level tax

- Which is the correct remedy?

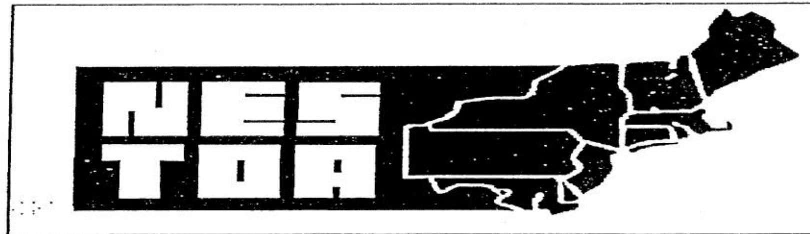
Dual Resident Fact Pattern

- Taxpayer is a resident of Philadelphia and Pennsylvania
  - i.e., taxpayer is domiciled in Philadelphia (Phyla. Income Tax Reg. § 101(m)) and has spent more than 30 days of the taxable year in PA (72 P.S. § 7301)).
- Taxpayer is subject to the Philadelphia wage tax (based upon earned income); the Philadelphia School Income Tax ("SIT") (based upon unearned income); and the PA Personal Income Tax ("PIT").
- Taxpayer works in Maryland and owns a condo in Maryland (where Taxpayer lives while working in Maryland).
- Taxpayer is present in Maryland more than 6 months out of the taxable year
- Taxpayer meets the Maryland definition of resident.
- Maryland seeks to tax 100% of the earned and unearned income at the County and State level.

NESTOA

- North Eastern States Tax Officials Association
- Cooperative Agreement on Determination of Domicile (October 1, 1996) was intended to address the potential for multiple taxation under the dual resident fact pattern
- The NESTOA agreement (in full) is attached following this slide

NESTOA



NORTH EASTERN STATES TAX OFFICIALS ASSOCIATION
COOPERATIVE AGREEMENT ON
DETERMINATION OF DOMICILE
OCTOBER 1, 1996

NESTOA

SECTION 1 PURPOSE OF COOPERATIVE AGREEMENT

WHEREAS, the revenue departments or divisions of the Northeastern States are responsible for enforcing the tax laws of their states in a fair and consistent manner to obtain compliance from the residents of their respective states; and

WHEREAS, multiple taxation of identical income creates the appearance of unfairness and fosters increased non-compliance; and

WHEREAS, non-compliance diminishes lawfully due tax revenue as well as create a higher burden on the compliant taxpayer; and

WHEREAS, the member states of the North Eastern States Tax Officials Association and other taxing jurisdictions recognize that mutual cooperation among the group will enhance the ability to work collectively at reducing the potential for multiple taxation of residents' income and to foster increased voluntary compliance in a cost effective manner;

NOW THEREFORE, the signatory states to this document agree among themselves to create a more uniform approach to the taxation of residents and a formalized process for resolving disputes in cases of multiple determinations of residency by member states' revenue agencies.

SECTION 2 DETERMINATION OF DOMICILE STATUS

The problems associated with domicile and residency are difficult to address because of the subjective nature of this whole area. It is therefore critical that any parameters selected to determine the individual's domicile be of a nature that would not be changeable at will or insignificant in nature. It is also important that the parameters be readily identifiable for ease of administration and increased voluntary compliance.

The revenue agencies agree that the adoption of uniform criteria which should be evaluated in determining an individual's domicile would provide a fair evaluation of the facts and circumstances present in any individual cases being reviewed. This agreement establishes the factors which the member agencies shall evaluate in their determination of an individual's domicile. The member agencies are free to consider any additional secondary factors which they may believe provide additional insight as to the individual's intent for the establishment of a domiciliary status. All member agencies adopting secondary factors agree to provide guidance to taxpayers and practitioners on such secondary factors.

The factors to be utilized are:

HOME - TIME - ITEMS NEAR AND DEAR
ACTIVE BUSINESS INVOLVEMENT - FAMILY CONNECTIONS

The member agencies do not adopt specific or uniform methods of evaluating the various factors since the facts and circumstances of each case and the economic conditions that exist in each locality may vary significantly.

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NESTOA

An agency's staff shall review the following issues within the factors:

Home

What are the residences owned or rented by the taxpayer? Where are they located? How are they used? What is the size and value of each residence? Responses to all such questions shall be considered.

Time

Where and how the individual spends time during the tax year shall be considered. Consideration shall also be given to whether the taxpayer is retired or actively involved in a business or profession. How much travel the individual does and the nature of the travel shall be considered. The overall living pattern or life style of the individual shall be examined.

Items "Near & Dear"

The location of the items or possessions that the individual considers "near and dear" to his or her heart, of significant sentimental value, family heirlooms, collections of valuables or possessions that enhance the quality of one's life style shall all be reviewed.

Active Business Involvement

How the taxpayer earns a living, whether the taxpayer is actively involved in any business ownerships or professions and to what degree the individual is involved as well as how that involvement compares to the involvement in business outside of the state are areas that shall be examined.

Family Connections [To be reviewed when the first four factors are not conclusive]

Where the individual's minor children attend school and, in certain unique and discrete situations, the residence of the individual's immediate family.

SECTION 3 SITUS OF SELECTED INCOME CLASSES

The revenue agencies agree that the taxing jurisdiction to which earned income is sourced should be entitled to the tax revenue associated with such income. In instances where the income is sourced, but not taxed, to a state other than the state of domicile and the state of statutory residance, the state of domicile should be entitled to such revenue. The tax revenue associated with "non-sourced" income from intangible assets should belong to the taxpayer's state of domicile.

Income from other sources such as, but not limited to, flow-through entities are not part of this agreement and each revenue agency must follow its own state laws regarding the reporting and taxability of such income.

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SECTION 4 CREDIT FOR TAXES PAID

The member states agree that the preferred method for the elimination of double taxation of the selected classes of income is the utilization of a credit for taxes paid to the other jurisdiction. The state to which income is sourced shall be entitled to the tax on earned income and the states of domicile and statutory residence shall be required to give the individual a credit for taxes paid to another jurisdiction on such income. The state in which an individual is domiciled shall be entitled to the tax on income sourced to, but not taxed by, a state other than the state of statutory residance and "non-sourced" income such as from intagible assets with the state claiming statutory residence being required to give the individual a credit for taxes paid to the state of domicile on such income.

In instances where current state law does not provide for such a method or the agency does not have the regulatory authority for such an interpretation of existing law, the agency shall make every reasonable effort to seek a legislative or regulatory change that would allow for the utilization of this preferred method. The agencies shall comply with all statutory and regulatory requirements of their state and this agreement shall in no way be construed to bind an agency to this uniform approach.

SECTION 5 PROCESS FOR THE RESOLUTION OF DISPUTED CASES

The revenue agencies agree that a formalized process shall be available to taxpayers after two or more states have made an initial determination that the individual is domiciled in their state, and such process shall be an administrative activity available before the utilization of the formal appeals process available in each of the respective states. The timing for the process would reduce the costs associated with having to handle formal appeals in one or more jurisdictions. The process shall also allow the parties to walk away if an agreement cannot be reached, in which case the taxpayer could then proceed with the appeal process already available to him or her. A closing agreement, if permitted under state law, would be developed and signed by the parties assuming that the process developed a resolution to the conflict, in which case it would be binding for future years unless the taxpayer provided clear and convincing evidence that a change in domicile had occurred.

The chief executive of each revenue agency agrees to appoint an individual within the respective agency, and such employee would be authorized to negotiate a solution with the taxpayer and the other revenue agencies. The revenue agencies also agree to utilize their best efforts in implementing and publicizing the process and any requirements for a taxpayer's utilization of it.

SECTION 6 SHARING OF DATA AND COMPLIANCE TECHNIQUES

The revenue agencies agree to share any data developed through their compliance techniques either voluntarily or through specific requests from another party to this agreement. The sharing of any data shall be within the parameters of state confidentiality statutes and through the Exchange Of Information Agreements currently in force among the member states.

NESTOA

SECTION 7 RATIFICATION OF AGREEMENT

The undersigned hereby ratify the Cooperative Agreement On Determination Of Domicile to the full extent permitted by their respective laws.

JURISDICTION:	DATE APPROVED:
STATE OF CONNECTICUT DEPARTMENT OF REVENUE SERVICES By: Gene Gavin	10/2/96
STATE OF DELAWARE DIVISION OF REVENUE By: William M. Remington	10/2/96
GOVERNMENT OF THE DISTRICT OF COLUMBIA By: [signature] Carter	10/17/96
STATE OF MAINE BUREAU OF TAXATION By: [signature]	10/1/96
STATE OF MARYLAND COMPTROLLER OF THE TREASURY By: [signature]	10/2/96
COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF REVENUE By: [signature]	10.2.96
STATE OF NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION By: Stanley R. Arnold	10/2/96
STATE OF NEW JERSEY DIVISION OF TAXATION By: Richard D. Gardner	10/2/96
STATE OF NEW YORK DEPARTMENT OF TAXATION AND FINANCE By: [signature] H. [signature]	10/1/96

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE

By: __________________ 10/2/96

STATE OF RHODE ISLAND
DIVISION OF TAXATION

By: __________________ 10/2/96

STATE OF VERMONT
DEPARTMENT OF TAXES

By: __________________ 10/2/96

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NESTOA's Intended Effect on Dual Resident Fact Pattern

- NESTOA §4, earned income is subject to tax by the state where the income is sourced whereas unearned income is subject to tax by the taxpayer's state of domicile
- As applied to our fact pattern, PA receives PIT limited to unearned income; Philadelphia receives SIT based upon unearned income; Philadelphia does not receive wage tax; and Maryland, at both the state and county level, receives income tax based upon wages earned in Maryland but not upon unearned income
- Such scheme is compliant with *Wynne*

NESTOA's Actual Effect on Dual Resident Fact Pattern

- UNCLEAR
- Per Section 4, "agencies shall comply with all statutory and regulatory requirements of their state and this agreement shall in no way be construed to bind an agency to [NESTOA's] uniform approach."
- Thus, a State is not necessarily required to comply with NESTOA.
- Query: if a State does not comply with NESTOA, is its tax scheme unconstitutional? See *Wynne!*

Conclusion

- Current PA and Philadelphia tax schemes are unconstitutional. See *Wynne.*
- *Wynne's* impact may also reach the dual resident fact pattern if a State does not adhere to NESTOA's uniform approach.

IMPACT IN NEW YORK STATE AND NEW YORK CITY

- *Must NYS allow resident credit against NYC personal income taxes for source income in other states?*
- CA is typical example, since NYC resident with source income pays 13% to CA and only gets credit against 8% NYS tax.
  - No longer can say Commerce Clause n/a to individuals
  - Unlike MD, NYC doesn't tax nonresidents
  - But is there a fair apportionment issue?

- *Is NY's Statutory Residency Test unconstitutional?*
- Court of Appeals in *Taming* upheld rule; declined to apply Commerce Clause analysis, but said that rule was fine anyway even if it did
  - How does the *Wynne* rule, that the Commerce Clause applies to individuals, affect the analysis?
  - Must a credit be provided for taxes paid to other states in all circumstances?
  - Different rule for "non-sourced" income?
  - 1995 NESTOA agreement attempted to remedy (see attached article)

- *Is NY's convenience rule unconstitutional?*
- Court of Appeals in *Zielinski* upheld rule; applied Commerce Clause analysis and said that rule was fine
  - No question about IC test; taxpayer conceded the rule passed.
  - External consistency was issue
  - But what about reverse-convenience days?

IMPACT IN KENTUCKY AND SURROUNDING STATES

KENTUCKY'S HISTORY

- The Kentucky Constitution provides for the levy of local license taxes or fees on "franchises, stock used for breeding purposes, [and] the various trades, occupations and professions." Ky. Const. § 181.
- The majority of Kentucky's counties and cities levy an "occupational license fee" and "net profits license fee" (read "income tax") on the compensation of individuals and net profits of businesses, respectively.
- The first taxes were enacted by the City of Louisville in 1948 and were patterned generally after the taxes imposed by the City of Philadelphia, Pennsylvania and the City of Toledo, Ohio.

THE APPLICATION

- The occupational license fees levied by Kentucky’s counties and cities differed from the taxes of Philadelphia, for example, in that Kentucky’s local taxes are imposed, not based on residency, but based on revenue derived from work or services performed in the local taxing jurisdiction.

- There is no provision for a credit for taxes paid to other states or local taxing jurisdictions for the occupational license fee on wages.

- The net profits license fee is apportioned.

THE DISCRIMINATION (OR LACK THEREOF)

- However, as a result of limiting taxation to compensation earned *in the taxing district*, the occupational license fee passes the internal consistency test used by the Court in *Wynne*.
- The problem emerges if a local taxing jurisdiction in one of Kentucky's seven contiguous states imposes a tax without a credit.
- As of 2011, 91 Indiana counties and 774 Ohio municipalities and school districts levied local income taxes.
- In the jurisdictions that do not provide a credit, the discriminatory effect described in and prohibited by *Wynne* results.

OTHER STATE ISSUES

Commerce Clause and Due Process Clause Restrictions on Taxing Corporate Income

- *Complete Auto* four-part test: (a) nexus; (b) fairly apportioned; (c) non-discriminatory; (d) fairly related to protections provided by the state.
- Did Maryland's tax on the Wynne's meet that test?
- "Axiomatic": can't tax out-of-state earnings;
- Do the same protections apply to individuals?
- Do states have the right to tax (domiciled) corporations on income earned everywhere?

Ginsburg's Dissent:

- Internal Consistency Test is not in the Constitution;
- USSCT acknowledged that it has practical limitations in American Trucking Assoc. v. Michigan (2005): Court looked at implications of adopting an iron-clad rule and blinked…
- The real issue here is not whether Maryland erred by taxing non-residents-since Wynne was not harmed by that treatment and would not be helped if Maryland ended practice.
- The real question is whether the states' right to tax residents on income earned everywhere must yield to the Commerce Clause.

Cummings Article:

- What was really going on in this case?
- Huge Implications for National Tax Policy
- Stalking horse for bigger issues—
- Challenge to graduated taxing systems;
- Challenge to residency-based tax at the federal level—of corporations and individuals;
- Put rights of commerce above rights of state sovereignty;
- Double Taxation as violation of the Commerce Clause?
- Double-taxation of dividends unconstitutional?

STATES – IMMEDIATE EFFECT AND LARGER ISSUES

- States do violate the Internal Consistency "test" in small ways—must every fee for conducting business be apportioned now? *ATA v. Michigan may* no longer represent a safe harbor for advancing legitimate state interests or administrative necessity/convenience.
- Credits for foreign taxes paid—the immediate challenge;
- Partial credit limitations, e.g., not allowing a credit for municipal taxes—may be subject to class-actions.

Longer-Term Issues

- How long will States have the ability to tax their residents on income earned everywhere if *Wynne* is carried through to its logical implications?
- How long will States have the ability to impose progressive tax rates if that affects "commerce?"
- Will states someday have to give credits for taxes paid by C-corporations on dividends paid to residents?
- Hellerstein: *Wynne* might have been a seminal event but it wasn't, to keep Justices Breyer & Sotomayor in the majority. **Maybe…Stay Tuned**…