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

ABA JOINT FALL CLE MEETING

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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