

Lawyers React To High Court Limiting Md.'s Taxing Power

Law360, New York (May 18, 2015, 8:48 PM ET) -- The Supreme Court ruled Monday that a Maryland tax scheme that does not allow residents to credit taxes paid to other jurisdictions against their county income taxes violates the dormant Commerce Clause. Here, attorneys tell Law360 the significance of *Comptroller of the Treasury of Maryland v. Wynne*.

Jay Adams, Jones Walker LLP

“The decision in *Wynne* reaffirmed a number of things [state and location tax] practitioners rely upon. One important outcome from this decision could involve credit for sales and use taxes paid when a local jurisdiction is involved. In Louisiana, the credit statute grants a credit for a tax paid to a 'similar taxing entity.' That would not necessarily include a tax paid to another state level collector. This decision should limit the ability of a local taxing jurisdiction to deny a credit even if the tax was not paid to another 'local' jurisdiction.”

Clark Calhoun, Alston & Bird LLP

“Contrary to what a number of outlets are reporting, today’s ruling does not require a full credit for taxes paid to other states. Rather, what it held is that in devising its scheme of taxation, a state may not have it both ways — i.e., it cannot fully tax the income of nonresidents earned in the state while providing less-than-full credit for income earned by residents outside the state. The 5-4 majority opinion re-affirms the essentially per se rule barring discrimination against interstate commerce. For multistate businesses, this means that they continue to have an important judicial protection against state laws that impose a higher rate or burden of taxation on out-of-state businesses. It also may have important implications for states’ growing use of their alternative apportionment powers. As the opinion forcefully affirms, the effect of a state’s taxing scheme may not discriminate against interstate commerce, regardless of the number of taxpayers that are actually discriminated against.”

Jaye Calhoun, McGlinchey Stafford PLLC

“This case has broader implications for taxpayers doing business in interstate commerce. Critically, for nonresidents increasingly tapped for taxes by remote states in an era of Congressional deadlock, this case provides much-needed confirmation of the court’s commitment to the dormant Commerce Clause doctrine. Also, the court’s distinction between the two provisions may impact lower courts which too frequently make reference to Due Process principles when deciding Commerce Clause cases. Finally, the court’s application of the dormant Commerce Clause regardless of the type of tax — net income v. gross receipts — or the type of taxpayer — corporations v. individuals — signals the broader protections offered by the Commerce Clause against the current wave of legislation based on state protectionist tendencies.”

David Daniels, Richards Kibbe & Orbe LLP

“Today’s decision is a huge win for Maryland taxpayers. It’s also a big win for our clients — a bipartisan group of leading tax economists who submitted the amicus brief relied on by the court. These scholars felt strongly about the constitutional issues at stake in this case. They gave the Supreme Court a new way to think about the dormant Commerce Clause — one that was not otherwise advanced by the parties to the dispute. Our clients are gratified that the court not only wholeheartedly adopted their analysis in this case but endorsed it as a framework that can be used to guide state tax policy going forward.”

James Dawson, Miles & Stockbridge PC

“In a 5-4 decision, the U.S. Supreme Court upheld the Maryland Court of Appeals and held that Maryland's tax scheme violates the dormant Commerce Clause by not allowing a credit against the local tax for taxes paid to another state. The Court did not address the 'local tax' component in its written decision — maybe because in *Frey* the Maryland Court of Appeals held that it was a state tax. The more interesting aspect of the decision will be its application to other types of state taxes; i.e., sales and franchise taxes and true 'local' taxes.”

Lawrence M. Hill, Shearman & Sterling LLP

"This is a seminal decision that protects state taxpayers from double taxation by the states. The Supreme Court invoked the dormant Commerce Clause of the Constitution to preempt the state of Maryland's attempt to discriminate against out of state taxpayers by effectively having them pay more than their fair share of taxes.”

Hamish Hume, Boies Schiller & Flexner LLP

"The majority got it right. This decision is very significant because it holds that the dormant Commerce Clause limits the ability of states to impose taxes even on their own residents. It holds that when those residents earn income from outside of the state, the state of residence must give a tax credit for the taxes imposed by other states on that out-of-state income. Maryland had refused to do that for the county portion of its tax system. This was especially inconsistent of Maryland because it at the same time imposed a full tax on the income that was earned from Maryland sources by people who were not resident in Maryland. In a 5-4 decision, the court ruled that this kind of internal inconsistency violates the dormant Commerce Clause, which, among other things, ensures that no state can impose a tax system that burdens interstate commerce differently from the way it burdens intrastate commerce. The Maryland scheme ran afoul of that rule by causing double state taxation of income earned out of state. What is especially interesting about this case is normally the court relies on the dormant Commerce Clause to strike down state tax schemes that impose discriminatory burdens on non-residents; here, the court applied the same principle to strike down a regime that imposed a discriminatory burden on residents who earn some or all of their income from outside the state of their residence."

Hollis Hyans, Morrison & Foerster LLP

“This decision rejects Maryland’s argument that states have unrestricted power to tax their residents, describing as 'fanciful' the idea that residents who are discriminated against are protected by their ability to vote against such taxes. It holds that the dormant Commerce Clause protections against discrimination are alive and well, so that a personal income tax that falls more heavily on resident taxpayers who engage in interstate activities is unconstitutional. It is likely to have an impact on many state and local tax systems, particularly those with a local component that does not provide a credit mechanism, such as New York’s.”

Howard Jacobson, Akin Gump Strauss Hauer & Feld LLP

“Now that the Supreme Court has ruled that Maryland’s taxing scheme was unconstitutional, the focus shifts to what I’ll call ‘Wynne II.’ In May 2014, Maryland enacted a law retroactively reducing the interest rate to be paid on refunds arising from the Wynne case from 13 percent to the prime rate, i.e., 3.25 percent. This raises several interesting questions. If the law was unconstitutional, can the state apply an interest rate almost 10 percentage points lower to those tax refunds? If it can, can it do so retroactively? Finally, given that the tax was unconstitutional, should interest be paid from the date the tax was imposed or, as the state would claim, only from the date 45 days after the refund claim was filed?”

Christian Kimball, Jenner & Block LLP

“Pragmatically, this decision tells me that state tax and the Commerce Clause work pretty much how I expected. States cannot tax in a way that discriminates against interstate commerce, and that rule is practical, based on effect rather than intent or formulation. Philosophically, this decision is part of an ongoing discussion about discrimination, which always has a ‘for’ and ‘against.’ Not discriminating against interstate commerce means that states cannot do everything they want. This is a constitutional level debate; it didn’t begin and will not end with this case.”

H. Jacob Lager, Freeman Freeman & Smiley LLP

“This decision reaffirms our nation’s historic aversion to the tariffs, protectionism, and ‘Economic Balkanization’ that would necessarily arise if all states were free to burden interstate commerce with a punitive rate. Though a rebuke, and a welcome precedent for business owners ... who wish to grow their out-of-state customer base, this narrow decision is not likely to prevent states from seeking new tax avenues. The decision itself notes that the Supreme Court has been striking down preferential tariffs since 1938. I’d expect states to continue to push the boundaries of permissible taxation in the future.”

Charles Rothfeld, Mayer Brown LLP

“Today’s Supreme Court decision in *Comptroller v. Wynne* forcefully reaffirmed, and in some ways expanded, the restrictions that the federal Constitution imposes on state taxation. By holding that one state must give a taxpayer credit for taxes paid to another state on income earned there, the court made very clear that all state taxes that have the effect of discriminating against activity in other states are unconstitutional; that individuals get the same protection from the Constitution’s Commerce Clause as do businesses; and that residents of a state may invoke the Commerce Clause to challenge their own state’s tax laws. The 5-4 decision also is notable because it shows that the Commerce Clause is one of the few areas of constitutional law where the court’s close division doesn’t break down along the usual ideological lines.”

--Editing by Emily Kokoll.