the Maryland income tax unconstitutional. The controversy surrounds the state's disallowance of credits against the Maryland county-level income tax for taxpayers who pay income tax to other states. The US Supreme Court has agreed to hear the state Comptroller's appeal in its next term. The Case was Maryland State Comptroller of the Treasury v. Wynne, No. 107.

Jun. 25, 2014

On January 28, 2013, the Maryland Court of Appeals found an important element of the Maryland income tax unconstitutional. The controversy surrounds the state's disallowance of credits against the Maryland county-level income tax for taxpayers who pay income tax to other states. The US Supreme Court has agreed to hear the state Comptroller's appeal in its next term. The Case was Maryland State Comptroller of the Treasury v. Wynne, No. 107.

The Law.

Maryland's income tax is composed of a state level portion and a county level portion. A taxpayer who earns taxable income from other states is allowed to take a credit against the Maryland state level income tax for income taxes paid to other states. The same Maryland taxpayer is prevented from taking a similar credit against the Maryland *county* income taxes paid.

Since no credit is allowed against the county level taxes paid, the net result for Maryland residents who earn taxable income from activities outside Maryland are "systematically taxed at higher rates relative to taxpayers who earn income entirely within . Those rates would be the result of multiple states taxing the same income." *Ibid*.

The Issue.

It is established precedent in the US that ***a state may tax its residents on all income***

no state may pass laws that impinge or inhibit interstate commerce, the power to regulate interstate commerce is granted solely to the US Congress.

The application of the Dormant Commerce Clause seeks to avoid "double taxation" that may occur when a resident is taxed at home on all their income (including income from out of state activities), and is taxed on those activities in the state where they occurred as well. The courts have never established a bright line test for determining the method by which states can avoid running afoul of the Dormant Commerce Clause, rather the states have some latitude in creating a method to avoid "double taxation."

The states use credits to offset income taxes paid in non-resident state so that taxes paid in home state are reduced.

- **Home states: tax ALL income**
- **Non-resident state: only tax income earned in their state**

So without credits from home state, some income would be taxed twice (constitutional no-no). The net resulting apportionment of income must ensure that "no instrumentality of commerce is subjected to more than one tax on its full value." Japan Line Ltd. v County of Los Angeles, 441 U.S. 434, 446-47.

Maryland employs a credit scheme to avoid crossing the Dormant Commerce Clause for its state level taxes, but the formula it employs does not allow credits against county-level Maryland income taxes paid. The net result is that a portion of income attributed to out of state activities is taxed by the state where the activities take place and is taxed by the state of Maryland for its county-level income taxes.

U.S. Supreme Court

The US Supreme Court has decided to hear the case possibly indicating their desire to

Maryland Appeals Court decision could mean a fiscal hit as revenue developed under a scheme like Maryland's would disappear.

If the Court overturns the Maryland Appeals Court decision, scattered and disparate state income tax apportionment will likely remain the status quo.

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