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## Designer Sam Edelman's \$6.2M Tax Protest Nixed By NY Court

By [James Nani](#) · June 26, 2018, 8:50 PM EDT

A midlevel New York appeals court on Tuesday upheld the dismissal of a \$6.2 million tax protest brought by shoe designer Sam Edelman and his wife, finding that a 2015 [U.S. Supreme Court](#) decision on double taxation didn't apply to their case.

The New York Appellate Division of the Supreme Court, First Judicial Department, said the U.S. Supreme Court case *Comptroller of the Treasury of Maryland v. Wynne* didn't affect the 1998 case *Tamagni v. Tax Appeals Trib. of State of N.Y.*, which the Edelmans' case turned on. Because *Wynne* didn't affect *Tamagni*, the state Supreme Court in New York County correctly dismissed the Edelmans' case for failure to state a cause of action, the appellate court said.

The Edelmans argued that New York's tax scheme violated the dormant commerce clause of the U.S. Constitution by unfairly permitting double taxation of their intangible income, because they were considered "statutory residents" by New York, but asserted they were domiciled in Connecticut. Edelman, a [Kenneth Cole](#) co-founder, and his wife argued that the tax scheme burdened interstate commerce and failed an "internal consistency" test requiring fair apportionment of income between states.

In *Wynne*, the U.S. Supreme Court held that the [commerce clause was violated](#) when Maryland taxed residents for out-of-state income and only gave a partial credit for the taxes that were paid in the state where income was earned. By not giving a full credit to taxes paid out of state, Maryland taxes residents twice and violated the commerce clause, the court found.

In the 1998 *Tamagni* case, New York's highest court decided against the taxpayer in a row over the state income tax. *Tamagni*, a New Jersey resident, argued that because New York did not give a credit for taxes paid to other states on investment income, the tax was a violation of the commerce clause and potentially subjected taxpayers to double taxation in violation of the Supreme Court's internal consistency test. The court disagreed, saying the internal consistency test did not apply to personal income taxes and therefore the state's residency test was legal.

But in its decision Tuesday, the First Judicial Department found *Wynne* was distinguishable from *Tamagni*, and the Edelmans' case, in two "critical respects," the court said.

"First, it did not involve individuals who faced double taxation on intangible investment income by virtue of being domiciliaries of one state and statutory residents of another," the court said. "Second, the income subject to tax in *Wynne* was not intangible investment income, but business income, traceable to an out-of-state source. Notably, New York tax law does not permit double taxation of such out-of-state income, but provides for a credit for taxes paid to the other state."

Though Wynne made clear that a tax scheme is not immune from commerce clause scrutiny simply because it is “residency-based,” the appellate court said the Edelmans’ case was not about out-of-state income but about intangible investment income, which “has no identifiable situs,” “cannot be traced to any jurisdiction outside New York” and is “subject to taxation of New York as the state of residence.”

In addition, while Tamagni referred to the "inapplicability of dormant commerce clause analysis to state resident income taxation," which the appellate court said is inconsistent with Wynne, it did so only after recognizing that the statute dictates "some level of dormant commerce clause scrutiny" and engaging in a thorough analysis that concluded that the taxation scheme did not violate the commerce clause.

The New York state attorney general’s office referred comment to the [New York State Department of Taxation and Finance](#), which did not immediately return a request for comment.

Tim Noonan, who represented the Edelmans, said they were disappointed with the decision but were “looking forward to the next step on appeal.”

“This case involves an important constitutional issue, and we think it is important that New York’s highest court addresses it,” said Noonan.

Samuel Edelman et al. are represented by Timothy Noonan of [Hodgson Russ LLP](#).

The New York State Department of Taxation and Finance is represented by the [New York State Attorney General](#)’s Office.

The case is Samuel Edelman et al. v. New York State Department of Taxation and Finance, case number 156415/16, in the New York State Supreme Court Appellate Division, First Judicial Department.

--Additional reporting by Eric Kroh. Editing by John Oudens.

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