Maryland Court of Appeals Upholds Lower Interest for *Wynne* Refunds

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Maryland's law reducing the interest rate for *Wynne* refunds does not violate the dormant commerce clause, according to the state's highest court.

The Maryland Court of Appeals ruled June 5 in *Wynne v. Comptroller of Maryland* that setting a lower interest rate for refunds resulting from the U.S. Supreme Court's 2015 decision in *Comptroller of the Treasury of Maryland v. Wynne* does not implicate the dormant commerce clause or discriminate against interstate commerce.

Timothy Noonan of Hodgson Russ LLP told *Tax Notes* June 8 that his concern with the Maryland Tax Court's opinion in this case, finding the reduced interest rate unconstitutional, was that "the court's limited analysis made it susceptible to reversal on appeal." He noted that "the Court of Appeals in this decision laid out its analysis in a comprehensive 35-page decision to come to the opposite conclusion in upholding the reversal of the tax court decision."

Noonan continued, "One of the more interesting points made by the court was that the payment of the statutory 13 percent interest rate to the *Wynne* refund claimants — a rate that exceeds the annual inflation rate — would actually result in them coming out better than hypothetical taxpayers who would not have paid the tax more than a decade ago, as the return on that money to the hypothetical taxpayers would have been less than 13 percent.

"Thus, in an odd twist, the very existence of such an unusually high rate of interest under Maryland law for refunds actually served to undermine the taxpayers' position that they somehow were being discriminated against," Noonan added.

Don Williamson, professor at the Kogod School of Business at American University and executive director of the Kogod Tax Policy Center, told *Tax Notes* that he believes the U.S. Supreme Court will almost certainly not accept an appeal in this case. He noted recent denials of cert petitions in *Steiner v. Utah State Tax Commission*, *Edelman v. Department of Taxation and Finance*, and *Chamberlain v. Department of Taxation and Finance*.

In this case, Williamson said, the Court of Appeals ruled that the dormant commerce clause isn't implicated by the interest rate provision, but what the law is for other matters is still uncertain.

Williamson added that the internal consistency test in *Wynne* is toothless unless the Supreme Court takes a dormant commerce clause case and provides definitions that can be applied to draw the line on where the dormant commerce clause falls.

Background

In 2015 the Supreme Court ruled in *Wynne* that Maryland's failure to provide a credit for the local portion of its individual income tax for taxes paid to other states violated the dormant commerce clause.

Maryland's Budget Reconciliation and Financing Act of 2014 (S.B. 172) allowed the comptroller to set a special annual interest rate for *Wynne* refunds equal to "the average prime rate of interest quoted by commercial banks to large businesses during fiscal year 2015" rounded to the nearest whole number, which resulted in a 3 percent interest rate. The law allows refunds that are authorized interest to generally receive interest at the greater of 13 percent or prime plus 3 percent.

Brian and Karen Wynne appealed the special interest rate to the Maryland Tax Court in 2016, arguing that the law was unconstitutional. The tax court in May 2018 ruled in favor of the Wynnes, finding that the law violated the dormant commerce clause under the "exact same logic" of the Supreme Court's decision in *Wynne*. The court declined to address the Wynnes' claims that the act was a retroactive law that violated the federal due process clause or that it violated the Fifth Amendment as an unlawful taking.

The comptroller appealed to the Circuit Court of Anne Arundel County, which ruled in December 2018 that the reduced interest did not violate the dormant commerce clause and remanded the case for the tax court to address the Wynnes' other issues.

The Wynnes filed a petition to have the court of appeals hear the case and bypass the court of special appeals, which was granted.

Other taxpayers also challenged the law in the Circuit Court for Baltimore City in *Holzheid v. Comptroller*, but the circuit court and the Maryland Court of Special Appeals ruled that the taxpayers were required to exhaust their administrative remedies and the class action suit should have been brought before the tax court.

Court of Appeals

The appeals court ruled that the dormant commerce clause did not require the Wynnes to receive "even more favorable treatment" than taxpayers who earned income solely from intrastate activities "in the form of a 13 percent annual interest rate on their refunds," finding that the state had compensated the Wynnes and similarly situated taxpayers by providing refunds with interest at the prime rate.

The court stated that the threshold question in a case regarding the dormant commerce clause is "whether the law implicates interstate commerce." If it does, according the court, the next question is whether the law discriminates against interstate commerce.

Finding that "there is a fundamental difference between a tax and the rate of interest that may be paid on a tax refund," the court stated that the interest rate a state chooses to pay on a refund may be frequently adjusted depending on the state's fiscal outlook and is much less likely to affect the decision-making of people involved in commercial activity.

“In short, the rate of interest paid on tax refunds is too attenuated from interstate commerce as to substantially affect or interfere with the decision-making that directs the flow of capital or the location of transactions,” the court added. “Accordingly, in our view, the interest rate established for tax refunds is not the sort of state action that implicates interstate commerce sufficiently to awaken the dormant Commerce Clause.”

The court also concluded that the reduction in the interest rate did not discriminate against interstate commerce, finding that the Wynnes had produced no evidence that the interest rate “would alter the competitive balance for interstate investment — or any other interstate industry, for that matter.”

The court continued that it was difficult “to hypothesize a counterpart taxpayer engaged in solely intrastate activities who prevails in a constitutional challenge to the State tax code that results in a refund to the taxpayer and others, as well as a sizeable hit to the State budget, who would receive a better remedy from the General Assembly.”