

Supreme Court Rejects New York Credit Denial Case

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By Andrea Muse

The U.S. Supreme Court rejected a challenge to New York's denial of a credit to statutory residents for taxes on intangible income paid to another state.

The Court on October 7 denied the June 24 [cert petitions](#) in [Edelman v. Department of Taxation and Finance](#) and [Chamberlain v. Department of Taxation and Finance](#). The [taxpayers argued](#) that the denial of the credit to statutory residents for taxes paid on intangible income to their domiciliary state violates the federal dormant commerce clause.

The taxpayers in both *Edelman* and *Chamberlain* were domiciled in Connecticut and paid taxes there on intangible investment income from the sale of stock in their companies. But New York determined that the taxpayers were statutory residents because they had permanent places of abode and spent more than 183 days per year in the state and also taxed the income. Finding that the income was not earned in Connecticut, New York denied the taxpayers a credit for the taxes paid to that state.

The taxpayers contended that New York's tax scheme was "plainly invalid" under the Court's 2015 decision in [Comptroller of the Treasury of Maryland v. Wynne](#) because it fails the internal consistency test.

The Court's denial leaves intact New York Supreme Court, Appellate Division, decisions [upholding the state's tax scheme](#). The New York Court of Appeals also let the appellate court decisions stand, [dismissing the taxpayers' appeals](#) March 26 after finding that "no substantial constitutional question is directly involved."

New York claimed in its [August 23 brief in opposition](#) that the state appellate courts [correctly determined](#) that *Wynne* doesn't apply to the instant cases and that the cases don't implicate interstate commerce.

The state courts concluded that a 1998 New York Court of Appeals decision holding that denial of the credits on similar facts was constitutional, [Matter of Tamagni v. Tax Appeals Tribunal of New York](#), controlled.

Reactions

Timothy Noonan of Hodgson Russ LLP, who represented the taxpayers, told *Tax Notes* October 7 that "the taxpayers are obviously disappointed that the Court declined to take the cases, especially in light of all the support we received from the organizations who filed amicus briefs."

"As has been speculated by some commentators, the New York decisions could have the more

nationwide effect of limiting the impact of the dormant commerce clause analysis applied by the Court in its 2015 *Wynne* decision,” Noonan said.

“It’s also important to note that in its brief opposing the grant of certiorari, one of the arguments made by the state of New York was that even if the double taxation issue in the cases merit[s] the Court’s attention, it would be better for the Court to ‘allow the issue to percolate in the lower courts’ before addressing the issue itself,” Noonan continued. “So perhaps the book is not completely closed on the issue.”

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 the Court may have believed that the issue isn’t ripe yet and may be looking for some other state or circuit to rule. Williamson said a future conflict between lower courts may see the Court accepting a challenge and finally defining the parameters of the dormant commerce clause. Williamson and the Kogod Tax Policy Center filed an amicus brief with the Court in *Edelman*.

Williamson continued that the case boils down to the problem of dual residency — that a taxpayer can be considered a resident of both Connecticut and New York and subject to tax on his worldwide income by both states, with one state not giving credit for the other state’s tax. Williamson said he couldn’t think of anything more discriminatory toward interstate commerce than that.

Michael Lurie of Reed Smith LLP told *Tax Notes* that as a practical matter, the denial of cert likely spells the end of the internal consistency issue at the New York state court level, though he noted that a cert denial is not a decision on the merits of a case. Lurie filed an amicus brief in *Edelman* on behalf of the Business Council of New York State Inc.

Lurie said the arguments in *Edelman* and *Chamberlain* focused on the commerce clause, adding that this made sense in light of the Court’s decision in *Wynne*. But Lurie continued that taxpayers may have alternative grounds for challenging statutory residency provisions and the double taxation depending on the fact pattern, including challenges based on fairness under the federal due process and privileges and immunities clauses.

Lurie said a taxpayer challenging a similar tax scheme in another state, especially if the challenge is successful at the lower court level, “might present a better posture for the Supreme Court to review” the issue.

Ruth Mason, professor of law at the University of Virginia School of Law, told *Tax Notes* October 7 that the reason the Court’s decision in *Wynne* “was so useful is that it provided clarity for lower courts in how to decide dormant commerce clause cases.” Mason provided expert opinion supporting the taxpayers in the case.

Mason said the Court in *Wynne* “affirmed how the internal consistency test should be applied and that courts should apply it in every tax discrimination case,” adding that the state courts got it wrong because they relied on pre-*Wynne* precedent. “That the Supreme Court did not correct the New York courts helps reintroduce confusion in this important area of law,” she added.