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Recent Developments: Wynne v. Comptroller of Maryland

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RECENT DEVELOPMENT

WYNNE V. COMPTROLLER OF MARYLAND: THE MARYLAND GENERAL ASSEMBLY'S 2014 BUDGET RECONCILIATION FINANCING ACT WHICH LOWERED INTEREST RATES FOR OUT-OF-STATE TAX REFUNDS DOES NOT VIOLATE THE DORMANT COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION.

By: Curtis Paul

The Court of Appeals of Maryland held that a provision in the Maryland General Assembly's 2014 Budget Reconciliation and Financing Act ("BRFA") which lowered the interest rates accrued on tax refunds for out-of-state income did not violate the dormant Commerce Clause of the United States Constitution. *Wynne v. Comptroller of Maryland*, 469 Md. 62, 94, 225 A.3d 1129, 1148 (2020). The court further held that interest rates on tax refunds are too attenuated from interstate commerce to trigger dormant Commerce Clause protections, and that the 2014 BRFA interest rate provision did not discriminate against any interstate markets or industries. *Id.*

During the 2006 tax year, Maryland residents Brian and Karen Wynne ("the Wynnes") made a significant amount of combined income from their Maryland corporation's out-of-state business ventures that was taxed both in Maryland, and other states where income was generated. Under Maryland's tax law, the Wynne's out-of-state income allowed them to claim a refund from Maryland for the taxes paid on that same income that was taxed in other jurisdictions. As of 2006 however, Maryland taxed income both at the state and county level, but only applied a refund to out-of-state taxes for the state portion of the Maryland income tax. The result was that the Wynnes paid double income tax in Maryland: first at the state level and again at the county level for their out-of-state income, without a reciprocal refund for the county tax.

In 2014 the Wynnes sought a remedy for the disproportionate tax treatment with the Maryland Tax Court and subsequent judicial review with the Circuit Court for Howard County. The Court of Appeals of Maryland, [and ultimately, the United States Supreme Court] held that the absence of a tax credit for the county portion of the Maryland income tax discriminated against interstate commerce and violated the dormant Commerce Clause. The Supreme Court further held that extending a tax credit to the county portion of the Maryland income tax for out-of-state derived income would be a sufficient remedy for the constitutional violation.

In 2014, as the Wynne's case was pending in the Supreme Court, the Maryland General Assembly drafted a Budget Reconciliation Financing Act ("BRFA") that would require the Comptroller to lower the interest rate on tax refunds for income derived from out-of-state, if the Supreme Court found in

favor of the Wynnes. Because the Supreme Court did indeed find in favor of the Wynnes, the General Assembly's 2014 BRFA was enacted, and the Comptroller lowered the interest rate to be paid on the out-of-state refunds. The effect of the Comptroller's order reduced the Wynnes' accrued interest on their tax refund for their out-of-state income by approximately \$14,000.00.

The Wynnes objected to the Comptroller's order and sought review with the Maryland Tax Court, arguing that the reduced interest rate on tax refunds for their out-of-state income violated the dormant Commerce Clause. The Tax Court found in favor of the Wynnes under the same logic of the dormant Commerce Clause violation which was found in the prior Supreme Court litigation. The Comptroller then sought judicial review with the Circuit Court for Anne Arundel County. The Circuit Court reversed the Tax Court's decision and the Wynnes filed a petition for a writ of certiorari to the Court of Appeals of Maryland, which was granted.

The Court of Appeals of Maryland examined whether the 2014 BRFA provision that lowered the interest rate on tax refunds for out-of-state income violated the dormant Commerce Clause. *Wynne*, 469 Md. at 80, 225 A.3d at 1140. The court began by stating that the 2014 BRFA was part of the remedy created by the General Assembly in the wake of the prior Supreme Court litigation, and the State was permitted to consider its own interests in fiscal planning when issuing the Supreme Court's mandated remedy. *Id.* at 82, 225 A.3d at 1140-41.

The court then applied the doctrine of the dormant Commerce Clause by first examining whether the relevant portion of 2014 BRFA regulates interstate commerce. *Wynne*, 469 Md. at 83, 225 A.3d at 1141. The court recited Supreme Court precedent that there are three categories of activities that can be regulated under the Commerce Clause: the channels, instrumentalities, and activities of interstate commerce. *Wynne*, 469 Md. at 85, 225 A.3d at 1142 (citing *United States v. Lopez*, 514 U.S. 549, 558-59 (1995)). The court stated that interstate activities such as product pricing regulation and favorable in-state tax treatment were industry regulations that were unlike the 2014 BRFA provision which concerned only the rate of interest on tax refunds. *Wynne*, 469 Md. at 86, 225 A.3d at 1143.

The court compared tariff taxation, which is the primary example of interstate commerce discrimination, to the 2014 BRFA provision which was aimed only at interest rates on tax refunds and is not itself a tax. *Wynne*, 469 Md. at 86, 225 A.3d at 1141. The court stated that "there is a fundamental difference between a tax and the rate of interest that may be paid on a tax refund." *Id.* at 86, 225 A.3d at 1143. The court further reasoned that this fundamental difference made it unlikely that individuals engaged in interstate commerce would even consider tax refunds in their decision making. *Id.* at 87, 225 A.3d at 1144. The court thus concluded that the 2014 BRFA was neither favorable in-state tax treatment, nor a regulation on interstate activity, and was too attenuated from an individual's interstate decision making to have an effect

on interstate commerce. *Id.* at 87, 225 A.3d at 1144. The court therefore held that the 2014 BRFA did not regulate interstate commerce or violate the dormant Commerce Clause. *Id.* at 87, 225 A.3d at 1144.

While the court found that the 2014 BRFA did not regulate interstate commerce, the court still examined whether the 2014 BRFA provision discriminated against interstate commerce. *Wynne*, 469 Md. at 88, 225 A.3d at 1144. The court stated that discrimination of interstate commerce requires that there be a “comparison of substantially similar entities” and therefore examined whether the 2014 BRFA provision was aimed at comparable markets for interstate investment or industry. *Wynne*, 469 Md. at 89, 225 A.3d at 1145 (quoting *Dep’t of Revenue v. Davis*, 553 U.S. 328, 342 (2008)). The court first stated that the interest rate on tax refunds in the current case was dissimilar from the previous litigation, in that the current 2014 BRFA was a cure for the prior constitutional defect. *Wynne*, 469 Md. at 90, 225 A.3d at 1146. The court further found that the Wynnes had failed to provide any evidence of an interstate market, or competition between markets, that would be affected by the 2014 BRFA provision. *Id.* at 91, 225 A.3d at 1146. The court rejected the Wynnes’ arguments that the 2014 BRFA discriminated in effect against out-of-state business investments and disincentivized income generating activities in other states because individuals who were not engaged in interstate commerce could also have the interest rates on their tax refunds reduced by the 2014 BRFA. *Id.* at 93, 225 A.3d at 1147-48. The court concluded, that absent evidence to the contrary, the 2014 BRFA provision did not discriminate against any comparable interstate markets or industries, and therefore did not discriminate against interstate commerce or violate the dormant Commerce Clause. *Id.*

The Court of Appeals of Maryland held that the interest rate to be paid on out-of-state tax refunds, as set forth in the 2014 BRFA, did not violate the dormant Commerce Clause of the United States Constitution. *Wynne v. Comptroller of Maryland* is an important case as it is the most recent and comprehensive Maryland Court of Appeals decision concerning the dormant Commerce Clause. The case will be of great use to scholars seeking the latest Maryland ruling on the dormant Commerce Clause, as well as to law practitioners seeking guidance on the legal standards for dormant Commerce Clause regulation and interstate tax law matters. Finally, *Wynne v. Comptroller of Maryland* will be an invaluable case to the Maryland General Assembly when drafting new legislation that concerns interstate commerce, taxation, and market regulation.