

judgment. Defendants opposed the conversion motion. After oral argument, the Court gave the parties notice that it was converting defendants' motion to dismiss into one for summary judgment. Thereafter, the parties agreed to a joint briefing schedule and plaintiffs cross-moved for summary judgment. The Court, at the request of counsel, held a second oral argument session.

Background

Plaintiffs, a married couple, have a residence in the state of Connecticut. The plaintiffs also had "living quarters" in New York City between 2009 and 2011. Plaintiff Chamberlain ("Mr. Chamberlain") was the president of an entity known as Chamberlain Communications Group, Inc. ("CCG") from 1993 until 2007. In 2007, CCG was sold to an unrelated entity. Mr. Chamberlain continued to serve as President of CCG's successor from March 1, 2007 until December 31, 2009. In 2010, he served as an advisor to CCG's successor. Mr. Chamberlain worked in New York City during his employment with CCG and CCG's successor. Plaintiff Crum ("Ms. Crum") worked for the City University of New York ("CUNY") during 2010 and 2011 as an assistant professor at Hunter College. For each year of 2009 through 2011, the plaintiffs filed joint Connecticut Resident Income Tax Returns. The plaintiffs also filed joint New York Nonresident Income Tax Returns ("New York returns") for each year. Plaintiffs acknowledge being physically present in New York for more than 183 days in each of these years.

Plaintiffs' New York returns were audited by respondent New York State Department of Taxation and Finance ("NYSDF"). NYSDTF determined that plaintiffs were "statutory residents" of New York State and New York City during the relevant time periods. Accordingly, plaintiffs were deemed to be New York residents who should have filed New York Resident Income Tax Returns. The audit resulted in NYSDTF finding that a tax liability of \$2,731,953 was due. The tax liability was calculated without providing any credits for the taxes plaintiffs paid to the state of Connecticut during the relevant time periods. Plaintiffs paid the tax liability balance under protest. The instant litigation ensued.

Discussion

Plaintiffs' rely on the United States Supreme Court decision in Comptroller of the

Treasury of Md. v Wynne, 135 S Ct 1787 [2015]) (“Wynne”). Specifically, plaintiffs argue that Wynne mandates a finding that New York’s “statutory residency scheme” violates the United States Commerce Clause. The residency “scheme” consists of New York’s Tax Law §§ 605(b)(1)(B), 612 and 620.

Defendants argue that the Dormant Commerce Clause is not implicated by this litigation. The defendants note that the Court of Appeals has already held that dual residency does not implicate interstate commerce for the purpose of income taxation (*see*, City of New York v State of New York, 94 NY2d 577, 598 [2003]). Defendants further point out that the taxes at issue herein are based upon plaintiffs’ status as residents of New York state. Finally, defendants assert that the intangible and investment income at issue was not earned in any particular State and cannot be traced to any jurisdiction outside of New York (Id.). Alternatively, defendants maintain that New York’s resident statutory scheme passes the internal consistency test used by Courts to analyze Commerce Clause challenges.

Defendants assert that Wynne does not apply to this matter and that the Court of Appeals decision in Tamagni v Tax Appeals Tribunal, 91 NY2d 530 [1998] (“Tamagni”) remains controlling authority. They note that, unlike Wynne, plaintiffs are not being taxed in New York for income specifically derived from business conducted outside of New York. Further, defendants contend that the precedents relied upon by the Wynne Court all involved statutes that had taxed residents for income clearly derived from business conducted outside of the particular state. The defendants also cite the Wynne Court’s repeated references to income earned by residents outside the state. Again, defendants maintain that the income at issue here is intangible income that was not derived out of state. Defendants contrast this intangible income with the fact pattern in Wynne, where Maryland was taxing its residents on income derived in other states. Accordingly, defendants maintain that Wynne should have no impact on this litigation and that Tamagni remains controlling authority on this Court.

Defendants also point out that Tamagni involved taxpayers like the plaintiffs herein who were statutory residents of New York but claimed another state as their domicile or primary residence. The Court of Appeals in Tamagni held that New York’s tax on a resident’s intangible income did not implicate the Commerce Clause (*see*, Tamagni v Tax Appeals Tribunal, *supra* at

532). The Tamagni Court further held that commuting to work in New York and/or maintaining a permanent residence in New York did not produce the requisite effect on commerce to implicate the Commerce Clause (*see, Id.* at 534). Defendants also point to the Tamagni Court's repeated findings that the double taxation at issue bore no relation to interstate commercial activity and that New York's tax scheme was merely a tax on residents based on their status as residents. In sum, defendants point out that on seemingly identical facts to those present herein, the Tamagni Court found that no violation of the dormant Commerce Clause was apparent.

Plaintiffs take the polar opposite position on each of defendants' arguments. Relying on Wynne, plaintiffs maintain that New York cannot accurately claim that the statutory scheme at issue is insulated from Commerce Clause scrutiny. The plaintiffs maintain that defendants are attempting to avoid Commerce Clause scrutiny by labeling the tax scheme issue as a tax on residency.

Next, plaintiffs argue that the statutory residency scheme substantially affects interstate commerce. They point to three factors: (1) the impact of the 183 day count residency requirement on commuters who cross state lines; and (2) the impact of the permanent place of abode requirement on a person engaging the real estate market in more than one state as well as the purchase of utilities and upkeep services in both the home state and New York. Further, plaintiffs contend that Wynne has abrogated the premise relied upon by the Tamagini Court as to the applicability of the dormant Commerce Clause to New York residents. Taking the next step, the plaintiffs also explain how New York's scheme flunks the internal consistency test. Further, plaintiffs point to New York's prior recognition of this precise problem and its failure to address it. Specifically, plaintiffs take issue with New York's failure to adopt the recommendations of the Northeastern States Tax Officials Association ("NESTOA"). NESTOA had proposed, for its twelve member states, the adoption of uniform credits for taxes paid to other states in dual-residency situations.

Returning to their analysis of Wynne, plaintiffs argue that the case repudiates the two arguments upon which the Tamagni decision was based. Plaintiffs maintain that Wynne guarantees that the Commerce Clause can protect state residents from their own state taxes. Additionally, plaintiffs argue that the Tamagni Court erred by failing to apply the internal

consistency test.

Finally, plaintiffs argue that the fact that Wynne involved earned income from sources outside of the state, as opposed to intangible income, is irrelevant. Plaintiffs argue that the analysis must be whether interstate commerce is substantially affected by the scheme as opposed to whether interstate commerce itself is being directly taxed. The plaintiffs stress that New York is exposing “non-domiciliaries” engaged in sufficient interstate activity to be deemed a statutory resident to a heavier tax burden than that faced by domiciliaries who confine their activities to their home state. Accordingly, they seek summary judgment and the aforementioned declaratory relief.

In further support of their summary judgment motion, defendants assert that plaintiffs: (1) have adopted an overly broad interpretation of Wynne; (2) are mistaken in their understanding of the status of dual residency; and (3) are mistaken in their application of the internal consistency test. Defendants argue that the dual residency situation before this Court was simply not a concern “addressed in Wynne directly, tangentially, or in analog.” Specifically, defendants reemphasize that Wynne only speaks to the taxability by one state of tangible income that is earned in another state by way of interstate commercial activity. Defendants contrast this with the plaintiffs’ situation, wherein New York is taxing intangible income that was not derived out of state. Further, defendants note that the Wynne Court clearly stated that double taxation would pass the internal consistency test if it did not unduly burden interstate commerce. The defendants also emphasize that plaintiffs are incorrectly comparing themselves to taxpayers who are solely residents of one state. Defendants contend that dual residency is not interstate commerce and that single residential real estate transactions (like the purchase of an apartment in New York City) are intrastate in nature. Finally, defendants stress that plaintiffs are misapplying the internal consistency test by focusing upon the impact on particular taxpayers as opposed the effect of the tax scheme on interstate commerce.

In further support of their cross-motion, plaintiffs stress that defendants have misapplied the internal consistency test. Specifically, plaintiffs argue that the internal consistency test is not met because New York failed to adopt the NESTOA agreement regarding credits for taxes paid to other states on intangible income.

The Court finds that Tamagni remains controlling law on the issues raised in this litigation. A review of the Wynne decisions reveals that it is merely a reaffirmation of longstanding principles and caselaw pertaining to state tax schemes and interstate commerce. The Wynne Court itself stresses that the results of the case should have been apparent based on prior United States Supreme Court rulings in 1938, 1939 and 1948. Further, the Wynne ruling does not in any respect provide meaningful or new guidance as to how this Court should rule on the constitutionality of New York's statutory residency scheme. Regardless, Tamagni remains controlling authority and directly addresses the constitutionality of New York's statutory residency scheme on individuals who are deemed residents of two states. Finally, the Court notes that Wynne repeatedly stressed the crucial fact that Maryland residents were having income earned outside of Maryland taxed twice. New York, on the other hand, is merely taxing the untraceable intangible income of two of its residents.

Based on Tamagni, the Court concludes that New York's statutory residency scheme does not violate the dormant Commerce Clause. Specifically, the Court finds that the double taxation that occurred here "does not fall on any identifiable interstate market" and "does not favor intrastate commerce over interstate commerce in a manner violative of the dormant Commerce Clause" (Tamagni v Tax Appeals Tribunal, *supra* at 541-542). Clearly, the double taxation at issue herein does not bear any relation to plaintiffs acts in commuting to or working in the New York City metropolitan area. Rather, the double taxation is attributable to plaintiffs status as New York statutory residents and the classification of the income as intangible income that cannot be tied to plaintiffs' activities in a State other than New York (*see, Id.*). Additionally, to the extent it is necessary for the Court to reach the issue, the Court finds that the statutory residency scheme at issue is internally consistent and satisfies the Complete Auto test set forth in Complete Auto Tr., Inc. v Brady, 430 U.S. 274, 279 [1977]). Accordingly, defendants' summary judgment motion must be granted, plaintiffs' cross-motion for summary judgment must be denied, and the declaratory relief sought by plaintiffs must be answered in the negative.

Based upon the foregoing, it is hereby

ORDERED that defendants' converted summary judgment motion is hereby granted in its entirety; and it is further

ORDERED that plaintiffs' cross-motion for summary judgment is hereby denied in its entirety; and it is further

ORDERED that plaintiffs' requests for attorneys' fees, costs and disbursements are hereby denied in their entirety; and it is further

ORDERED, ADJUDGED and DECLARED that New York's statutory residency provisions do not violate the dormant Commerce Clause of the United States Constitution; and it is further

ORDERED, ADJUDGED and DECLARED that the statutory residency provisions administered by defendants do not violate the dormant Commerce Clause of the United States Constitution and defendants are not prohibited from retaining the taxes paid by plaintiffs on notices or assessments that fail to provide a credit for taxes plaintiffs paid to other states on investment and intangible income.

This shall constitute the Decision, Order and Judgment of the Court. The original Decision, Order and Judgment is being returned to defendants' counsel who is directed to enter this Decision, Order and Judgment without notice and to serve plaintiffs' counsel with a copy of this Decision, Order and Judgment with notice of entry. The Court will transmit a copy of the Decision, Order and Judgment and the papers considered to the County Clerk. The signing of the Decision, Order and Judgment and delivery of a copy of the Decision, Order and Judgment shall not constitute entry or filing under CPLR Rule 2220. Defendants' counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER.

Dated: Albany, New York
March 3, 2017

Roger D. McDonough
Supreme Court Justice

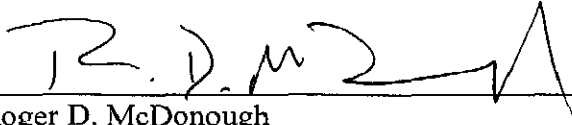
Papers Considered¹:

1. Defendants' Notice of Motion, dated March 4, 2016;
2. Affirmation of Rachel Maman Kish, Esq., A.A.G., dated March 4, 2016, with annexed exhibits;
3. Plaintiffs' Notice of Motion to Convert, dated April 29, 2016;
4. Affirmation of Michelle L. Merola, Esq., dated April 29, 2016, with annexed exhibits, including affidavit of Professor Ruth Mason, Esq., sworn to on April 27, 2016, with annexed curriculum vitae;
5. Affirmation of Michelle L. Merola, Esq., dated April 29, 2016, with annexed exhibit;
6. Affirmation of Good Faith of Michelle L. Merola, Esq., dated April 29, 2016;
7. Plaintiffs' Notice of Cross-Motion, dated August 26, 2016;
8. Affirmation of Timothy P. Noonan, Esq., dated August 26, 2016, with annexed exhibits;
9. Affidavit of Richard Chamberlain, sworn to August 24, 2016, with annexed exhibits;
10. Transcript of Oral Argument held on November 17, 2016, received by the Court on December 13, 2016.

¹ Both parties submitted memoranda of law in support of their respective positions.

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