



Comptroller v. Wynne: Implications for New York State

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MARYLAND'S PERSONAL INCOME TAX ON RESIDENTS

- MD residents (like NY residents) pay tax on their worldwide income
- MD personal income tax has two components: (1) state and (2) county
- Nonresidents only pay tax on sourced income, but they pay BOTH the state and county tax (called “special nonresident tax”)
- Residents only allowed credit against state portion of tax

THE INTERNAL CONSISTENCY TEST

- The Commerce Clause requires that taxes on interstate commerce be nondiscriminatory and fairly apportioned.
- This test is designed to allow us to distinguish between: (i) a tax structure that is inherently discriminatory (bad); and (ii) one that might result in double taxes only as a result of two nondiscriminatory state schemes (OK)
- Past cases may have suggested that the Commerce Clause was n/a to individual income taxes; the Court laid that to waste.

THE INTERNAL CONSISTENCY TEST

The test: whether interstate and intrastate commerce would be taxed equally if every state were to adopt the precise tax scheme at issue

- State A imposes a 1.25% tax on all residents, regardless of where earned.
- State A also imposes a tax on nonresidents' source income at 1.25%
- No resident credits
- April and Bob live next door to each other in State A; Bob's business located in State B; April's is all in State A.
- To apply the I/C test, we have to assume all states have the State A scheme. State A fails the test!!

	April	Bob
State A Tax	1.25%	1.25%
Hypo State B Tax	0	1.25%
Total Bill	1.25%	2.5%

THE INTERNAL CONSISTENCY TEST: PASSING GRADE?

Could this be *cured* in order to pass the Internal Consistency Test?

- State A imposes a 1.25% tax on all residents, regardless of where earned.
- State A also imposes a tax on nonresidents' source income at 1.25%
- *State A provides resident credit for taxes paid to other states on sourced income*
- April and Bob live next door to each other in State A; Bob's business located in State B; April's is all in State A.

	April	Bob
State A Tax	1.25%	0
Hypo State B Tax	0	1.25%
Total Bill	1.25%	1.25%

THE INTERNAL CONSISTENCY TEST: PASSING GRADE?

Could this be cured in order to pass the Internal Consistency Test?

- State A imposes a 1.25% tax on all residents, regardless of where earned.
- *State A does not tax on nonresidents*
- No resident credits
- April and Bob live next door to each other in State A; Bob's business located in State B; April's is all in State A.

	April	Bob
State A Tax	1.25%	1.25%
Hypo State B Tax	0	0
Total Bill	1.25%	1.25%

- But is this fairly apportioned – externally consistent?

THE INTERNAL CONSISTENCY TEST: BE CAREFUL

Don't get lost in the differences between the rules in two states

- State A imposes a 1.25% tax on all residents, regardless of where earned.
- *State A does not tax on nonresidents and provides no resident credits (which is internally consistent per previous slide)*
- But assume State B is a *real state*; and it *does tax* nonresidents
- April and Bob live next door to each other in State A; Bob's business located in State B; April's is all in State A.

	April	Bob
State A Tax	1.25%	1.25%
<i>Actual</i> State B Tax	0	1.25%
Total Bill	1.25%	2.5%

- This stinks for Bob. And there is double tax. But NOT because State A's scheme fails the test; only because of what State B is doing.

QUESTIONS REMAIN

- *Must NYS allow resident credit against NYC personal income taxes for source income in other states?*
- CA is typical example, since NYC resident with source income pays 13% to CA and only gets credit against 8% NYS tax.
 - No longer can say Commerce Clause n/a to individuals
 - Unlike MD, NYC doesn't tax nonresidents
 - But see slide 6: fair apportionment?



QUESTIONS REMAIN

- *Is NY's Statutory Residency Test unconstitutional?*
- Court of Appeals in *Tamagni* upheld rule; declined to apply Commerce Clause analysis, but said that rule was fine anyway even if it did
 - How does the *Wynne* rule, that the Commerce Clause applies to individuals, affect the analysis?
 - Must a credit be provided for taxes paid to other states in all circumstances?
 - Different rule for “non-sourced” income?

