

Maryland Tax Court Holds Lower Interest for *Wynne* Refunds Unconstitutional

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By Andrea Muse

A law reducing the interest rate for refunds resulting from the U.S. Supreme Court's decision in *Comptroller of the Treasury of Maryland v. Wynne* is unconstitutional, the Maryland Tax Court held May 23.

The Maryland Tax Court held in [Wynne v. Comptroller of the Treasury of Maryland](#) that setting a lower interest rate for *Wynne* refunds than for other income tax refunds is unconstitutional, following "the exact same logic" of the [Supreme Court's 2015 decision](#) in *Wynne*. The court ordered interest paid on the refund claims at the rate of 13 percent, the same interest rate paid for other refunds.

Justin Brown of Eversheds Sutherland LLP told Tax Analysts May 30 that given "that the limit on interest rates imposed by the law at issue in this case only applied to refunds arising from the *Wynne* case, it was difficult for the state to argue that the interest limitation does not discriminate against interstate commerce."

Brown said that instead of passing a law lowering the interest rate for all refunds, "the legislature singled out refunds arising from the *Wynne* case, which necessarily limits its application to individuals with interstate income."

"This decision highlights the double-edged sword of extraordinarily high statutory interest rates for tax payments," Brown said. "The high interest rate benefits the state when applied to late payments of tax, but requires the state to pay out large amounts of interest in the case of a refund."

Brown added that "Maryland passed legislation in 2016 phasing in lower interest rates for late payment of taxes and tax refunds."

Timothy Noonan of Hodgson Russ LLP said that he understood "the logic behind the court's decision, and it seems like the right and fair answer, but it would have been helpful if the court had outlined the basis for its reasoning a bit more," alluding to the brevity of the court's one-page order.

"It's not clear to me that the imposition of a higher interest rate for *Wynne* refunds would fail the *Complete Auto* test or be deemed to be internally inconsistent," Noonan continued.

Noonan also noted that reducing the interest rate for everyone was the easy solution to Maryland's problem, adding that states sometimes do this when faced with constitutional challenges alleging disparate treatment.

Joe Shapiro, spokesman for the comptroller of Maryland, told Tax Analysts May 30 that they were reviewing the decision and their options.

After the Supreme Court ruled 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, state lawmakers amended the interest rate for refunds resulting from the decision.

Under Maryland law at the time, interest generally accrued on refunds at the greater of 13 percent or prime plus 3 percent. But the 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.

[Taxpayers challenged](#) the reduced interest rate, both in front of the Maryland Tax Court and in a [class action suit](#) filed in the Circuit Court for Baltimore City, *Holzheid v. Comptroller of the Treasury of Maryland*.

In January, the [circuit court](#) dismissed the class action suit, finding that the plaintiffs were required to exhaust their administrative remedies and the suit should have been brought before the Maryland Tax Court.

But the circuit court advised that "given the *Wynne* court's finding of unconstitutionality of Maryland's imposition of taxes upon parties similarly situated to the plaintiffs in this case, it would appear that the same rationale regarding the dormant Commerce Clause of the United States Constitution would apply."

"In addition to the class action which was dismissed by the circuit court, numerous other taxpayers have filed administrative protests with the Comptroller contesting the validity of the limited interest rate on *Wynne* refunds," Brown said. "These protests have been held in abeyance pending the outcome of this litigation. It is expected that the comptroller will appeal this tax court decision to the circuit court and that the other protests with the comptroller will remain in abeyance until final resolution of this case."

Andrew Levy of Brown Goldstein Levy LLP, who represented the plaintiffs in the class action suit, told Tax Analysts that they were "gratified that both of the Maryland courts that have considered the issue have agreed with plaintiffs' position that Maryland illegally deprived thousands of Marylanders of interest to which they were lawfully entitled."