

IN THE COURT OF APPEALS
OF MARYLAND

No. 107

September Term, 2011

MARYLAND STATE COMPTROLLER
OF THE TREASURY

v.

BRIAN WYNNE, ET UX.

Bell, C.J.
Harrell
Battaglia
Greene
Adkins
Barbera
McDonald,

JJ.

Opinion on Motion for Reconsideration by
McDonald, J.

Filed: May 17, 2013

The Comptroller has filed a Motion for Reconsideration and, Alternatively, a Motion for Stay of Enforcement of the Judgment. The Wynnes opposed that motion. The parties filed memoranda of law and other materials in support of their respective positions.

It appears appropriate to clarify two points raised in the papers submitted by the parties:

(1) The Comptroller raised the question of whether he could deny application of a credit to the Wynnes for income taxes paid by an S corporation, such as Maxim, in another state that does not accord pass-through treatment to S corporation income, but rather taxes the income of such a corporation in the same way that it taxes the income of a C corporation. The parties did not brief, and we did not consider, the ways in which other states may treat S corporation income other than as pass-through personal income of the corporation's shareholders. Our opinion does not foreclose different treatment in Maryland of income taxes paid in other states that are not based on pass-through personal income.

(2) A state may avoid discrimination against interstate commerce by providing a tax credit, or some other method of apportionment, to avoid discriminating against interstate commerce in violation of the dormant Commerce Clause. The Comptroller interprets a footnote in our earlier opinion to hold that a state must provide a tax credit. Slip Op. at pp. 28-29 n.26. While the footnote might have been worded more elegantly, it referred primarily to the method used by the Legislature in the Maryland income tax; we did not mean to preclude other methods that might be utilized in other contexts.

The Motion for Reconsideration is DENIED; however, we shall STAY the effective date of the mandate pending the disposition of a timely petition for certiorari filed by the Comptroller with the United States Supreme Court.