

Financial Institutions

Massachusetts Financial Institution Excise Tax to Be Reconsidered in Light of ‘Wynne’

The U.S. Supreme Court told the Massachusetts Supreme Judicial Court to reconsider the state’s financial institution excise tax in light of last session’s decision in *Wynne* (*First Marblehead Corp. v. Mass. Comm’r of Revenue*, U.S., No. 14-1422, *cert. granted and remanded*, 10/13/15).

The Supreme Court granted certiorari Oct. 13 to student loan securitizer First Marblehead Corp. in its challenge to a Massachusetts tax the company says unfairly targets activities not connected to the state. First Marblehead said in its petition that the state taxed 51 percent of its income from student loans even though most of the loans originated and were serviced out-of-state (110 DTR K-1, 6/9/15).

In a summary disposition, the Supreme Court ordered the state court decision vacated and remanded “for further consideration in light of” *Comptroller of Treasury of Md. v. Wynne*, 135 S. Ct. 1787, 2015 BL 152755 (2015). In *Wynne*, the court ruled that Maryland discriminated against interstate commerce by taxing resident individuals on all of their income without a credit for taxes paid to other states, while taxing non-residents on their income sourced to Maryland.

Inconsistent Application. The Supreme Court applied the internal consistency test in *Wynne* to find that the tax violated the dormant commerce clause of the U.S. Constitution.

Alicia Pilar Mata of the Tax Executives Institute Inc. in Washington told Bloomberg BNA Oct. 13 that the court followed the recommendation in TEI’s amicus brief supporting First Marblehead when the court granted certiorari and remanded the case to the Massachusetts court for further reconsideration in light of *Wynne*.

Mata said the Massachusetts high court correctly stated the internal consistency test in its opinion but didn’t apply it correctly. The Massachusetts court concluded that there was internal consistency because there was no actual double taxation. The internal consistency test actually requires a court to consider whether double taxation would hypothetically occur if all states applied the questioned tax regime to the taxpayer, Mata said.

Certiorari Denial. The Supreme Court denied certiorari in another state tax case, *Hambelton v. Washington*, U.S., 14-1436, *cert. denied*, 10/13/15. The taxpayer sought review of a Washington law that retroactively applied the state’s estate tax to qualified terminable interest trust property upon the death of the second spouse if the first spouse died before May 17, 2005 (182 DTR K-2, 9/21/15).

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