



Written by [Raven Clabough](#) on May 19, 2015

Supreme Court Strikes Down Maryland's Double-Dipping Taxation Policy

On Monday, the U.S. Supreme Court struck down a Maryland tax that ultimately double-taxed its residents for income that were earned in other states. Fox News reports that the ruling is likely to cost Maryland and any other states with similar policies hundreds of millions of dollars.



The case, brought forward by a Maryland couple who earned income from multiple states, focused on Maryland's treatment of salary earned outside the state. Fox News writes,

Most states give residents a full credit for some taxes paid on money earned out of state. Yet Maryland, while allowing residents to deduct income taxes paid to other states from their state tax, did not apply that deduction to a local "piggy back" tax collected for counties and some city governments.

Maryland defended its policy by stating that it uses the tax money to pay for local services such as public schools. Maryland's acting solicitor general, William Brockman, argued that the state should not have to forfeit revenue from residents who enjoy state local services ranging from schools to public safety. "You don't get 18% of a firetruck or a day of school because you earned 82% elsewhere," he said. "You get 100%, just like your neighbor does."

According to the Supreme Court justices, Maryland's policy is unconstitutional, as it effectively discouraged "interstate commerce." [Their ruling said](#), "If every State adopted Maryland's tax structure, interstate commerce would be taxed at a higher rate than intrastate commerce." Other states that could be affected by the ruling include New York, Indiana, Ohio, and Pennsylvania.

"Maryland's tax scheme is inherently discriminatory," the justices wrote in the 5-4 ruling, "and operates as a tariff. Maryland's scheme creates an incentive for taxpayers to opt for intrastate rather than interstate economic activity."

The *Washington Post* noted that the ruling affects approximately 55,000 Maryland taxpayers. And those residents who tried to claim the credit on taxes paid on money earned outside of Maryland on their county income tax returns between 2006 and 2014 will likely be eligible for refunds, which could cost the state \$200 million with interest.

As a result of the ruling, small business owners who pay income taxes to another state on income earned in that state will be able to claim a credit for both the state and county portions of the Maryland tax, which will cost Maryland \$42 million per year in revenue.

Unfortunately, Maryland homeowners will likely be hit the hardest by the new ruling, as state officials will have to look elsewhere for revenue.

"I was hoping we would avoid this," said County Executive Ike Leggett (D), warning that the loss of



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revenue increases the likelihood of a major property tax increase next year. “This case cannot be overstated in terms of its significance,” he added.

Brian and Karen Wynne, a Howard County couple, brought the case to court, claiming that the state illegally charged \$25,000 in double taxation on income they earned in 2006. The couple reported \$2.7 million in income in 2006, half of which had been earned from business conducted in more than 36 states. The Wynnes paid \$123,363 in Maryland state income tax for 2006, and claimed \$84,550 in Maryland credit, which Maryland did not offer.

Justice Samuel Alito, Jr. wrote the opinion for a majority that comprised himself, Chief Justice John Roberts, Jr., and Justices Anthony Kennedy, Stephen Breyer, and Sonia Sotomayor.

According to Alito, Maryland’s tax policy violated the “dormant Commerce Clause,” a doctrine that the court has long recognized, which views the interstate commerce clause as one that not only allows Congress the power to regulate commerce among the states, but also prevents states from passing laws that would restrict interstate business.

Alito wrote that Maryland’s tax law violated that implicit aspect of the commerce clause. He also observed that the Supreme Court has set a precedent of striking down taxes that subject businesses to higher rates on money they earn in interstate commerce, and therefore, the same principles should be applied to individuals. Maryland officials combatted this argument by stating that individuals are different in that they can vote against tax policies with which they disagree — an assertion Alito directly opposed in his opinion:

The notion that the victims of such discrimination have a complete remedy at the polls is fanciful. It is likely that only a distinct minority of a State’s residents earns income out of State. Schemes that discriminate against income earned in other States may be attractive to legislators and a majority of their constituents for precisely this reason.... In short, petitioner’s argument would leave no security where the majority of voters prefer protectionism at the expense of the few who earn income interstate.

Justices Ruth Bader Ginsburg, Antonin Scalia, Elena Kagan, and Clarence Thomas dissented, with Ginsburg, Scalia, and Thomas writing separate opinions.

According to Ginsburg’s principal dissent, there was nothing in the Constitution that compelled Maryland — or any other state — to change its laws because of taxes paid by its residents elsewhere.

“More is given to the residents of a state than to those who reside elsewhere; therefore, more may be demanded of them,” Ginsburg wrote in the main dissent.

“A taxpayer living in one state and working in another gains protection and benefits from both — and so can be called upon to share in the costs of both states’ governments,” she said.

Scalia’s dissent states that the underlying meaning of the commerce clause to which Alito referred is a “judge-invented rule under which judges may set aside state laws that they think impose too much of a burden upon interstate commerce.”

Agreeing with Alito’s statement that such a reading of the interstate commerce clause has had a long history, Scalia wrote, “So it does, like many weeds. But age alone does not make up for brazen invention.” He added that the majority ruling also ignores another decades-long precedent of allowing states leeway to set their own tax policies.

The decision was a difficult one for the court, prompting 59 pages in total of opinions and dissents.



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Michelle Parker, a spokeswoman for Maryland Comptroller Peter Franchot (D), said in a statement Monday that the office will “work diligently and in a timely manner to comply with the decision and enforce Maryland law consistent with the decision of the Supreme Court.”

Parker indicates that the office is already reviewing about 8,000 refund claims dating back to 2006. According to the *Washington Post*, money for the refunds will come from a state income tax reserve fund.



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