Indiana Department of Revenue

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Income Tax Information Bulletin	#115
Subject:	Comptroller of Maryland v. Wynne and Indiana Department of Revenue Treatment of Claims Based on That Case
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References:	IC 6-3.5-1.1-6; IC 6-3.5-1.1-23; IC 6-3.5-7-8.1; IC 6-3.6-8-6; IC 6-8.1-9-1; *Comptroller of Maryland v. Wynne*, 135 S. Ct. 1787 (2015).

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Summary of Changes

Only nonsubstantive, technical changes have been made to this bulletin. It has been primarily changed to reflect updated formatting.

Introduction

In 2015, the United States Supreme Court issued a decision in *Comptroller of Maryland v. Wynne*, 135 S. Ct. 1787, which considered the constitutionality of Maryland's tax system. Maryland collected a state income tax, a "special nonresident tax," and a "county" income tax. Maryland required all its counties to impose the county tax, which the state collected, at a rate based on the county in which the individual taxpayer lived. If a Maryland resident earned some income outside Maryland, that resident paid the state income tax and the county income tax on all income, but was entitled to a credit against state taxes *only* for income tax paid to other states, *not* for any county taxes paid to counties in other states.

The Supreme Court held that Maryland's tax structure violated the dormant Commerce Clause. As the Court explained, "States are allowed to tax a taxpayer's multistate income if the income is fairly apportioned among taxing jurisdictions," but a state may not impose a tax "which discriminates against interstate commerce . . . by subjecting interstate commerce to the burden of multiple taxation." To evaluate the constitutionality of interstate taxes, the Court adopted the

"internal consistency" test. The internal consistency test "looks to the structure of the tax at issue to see whether its identical application by every State . . . would place interstate commerce at a disadvantage as compared with commerce intrastate." The Court held that Maryland's tax scheme failed the internal consistency test because it "inherently" subjected interstate income to higher taxes than intrastate income.

Because Indiana has both state and county income taxes, the department has received many questions based on the *Wynne* decision.

Analysis

The tax regimes of Maryland and Indiana differ in several key respects. Like Maryland, Indiana imposes a state income tax, taxes residents on income earned elsewhere, and taxes non-residents on income earned in Indiana.

Unlike Maryland, however, Indiana allows credits for out-of-state taxes at both the state and local levels. Indiana allows a credit for out-of-state income taxes against Indiana's state income tax and a credit for out-of-state local income taxes against local income taxes owed in Indiana. IC 6-3.5-1.1-6 (prior to repeal January 1, 2017); IC 6-3.5-6-23 (prior to repeal January 1, 2017); IC 6-3.5-7-8.1 (effective January 1, 2015 and prior to repeal January 1, 2017); IC 6-3.6-8-6 (effective January 1, 2017). According to the Supreme Court, had Maryland offered credits for out-of-state taxes, Maryland's tax system would have survived constitutional scrutiny: "To be sure, Maryland could remedy the infirmity in its tax scheme by offering, as most States do, a credit against income taxes paid to other States. If it did, Maryland's tax scheme would survive the internal consistency test and would not be inherently discriminatory." *Wynne*, 135 S.Ct. at 1805.

Indiana also maintains symmetry in allowing credits at both the state-to-state level and the county-to-county level. Indiana does not permit out-of-state *state* income taxes to offset Indiana *county* income taxes or allow out-of-state local income taxes to offset Indiana state income taxes. In Indiana, unlike in Maryland, each county chooses whether to impose a county-level income tax, and each county's governing bodies must independently approve both the tax and the rate. Until 2013, at least one county in Indiana imposed no county-level income tax at all.

Although Indiana does not permit out-of-state *state* income taxes to offset local *county* income taxes, Indiana's tax system is internally consistent. Indiana allows both state-to-state and county-to-county credits. There is nothing "inherently" discriminatory -- or discriminatory at all -- in how Indiana treats out-of-state income. Unlike in Maryland, Indiana's counties make their own separate decisions on how much, if any, county-level income tax to impose.

For these reasons, Indiana's tax regime meets the internal consistency test set forth in *Wynne*.

Pursuant to Indiana's statutes, the department will continue to permit out-of-state state income taxes to be applied against Indiana state income taxes. Likewise, the department will continue to permit out-of-state local income taxes to be applied against Indiana county income taxes. Under Indiana law, the department cannot permit out-of-state state income taxes to be applied against

Indiana county income taxes or out-of-state local income taxes to be applied against Indiana state income taxes.

Pre-2015 CEDIT

For the county economic development income tax (CEDIT), IC 6-3.5-7 did not provide a credit for out-of-state local income taxes prior to January 1, 2015. After review, the department has determined that a credit for out-of-state *local* income taxes will be permitted against pre-2015 CEDIT liabilities.

If a credit for out-of-state local income taxes (not state income taxes) has not previously been permitted against a taxpayer's CEDIT liability, a taxpayer may file a claim for refund or credit based on the allowance of out-of-state local income taxes against CEDIT. However, the amount allowable as a credit shall be no greater than:

1. The out-of-state local income tax liability on the adjusted gross income taxed by a non-Indiana locality, reduced by the credit permitted under IC 6-3.5-1.1-6 or IC 6-3.5-6-23 on that same income, or
2. The amount the taxpayer's CEDIT liability would have been reduced by eliminating the adjusted gross income taxed by a non-Indiana locality from the taxpayer's Indiana adjusted gross income,

whichever is less.

Any claim for refund based on this interpretation must be filed prior to the expiration of the statute of limitations provided under IC 6-8.1-9-1. The department will not grant a credit of out-of-state local income taxes absent sufficient documentation that the individual actually paid the tax.

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