SUPREME COURT OF LOUISIANA

Ivan I. Smith, Jr. and Gloria G. Smith v. Kimberly L. Robinson, Secretary of the Department of Revenue, State of Louisiana

265 So. 3d 740 (La. 2018) · No. 2018-CA-0728 · Decided December 5, 2018

SUMMARY

The Supreme Court of Louisiana held that 2015 La. Acts No. 109, which amended Louisiana Revised Statutes § 47:33 to condition credits for income taxes paid to other states on reciprocal treatment, violated the dormant Commerce Clause. The court also held that the Texas franchise tax qualified as a net income tax for purposes of the statute and affirmed the district court's judgment awarding the taxpayers a refund.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Genovese, Justice; Genovese, J.; Freddie Pitcher, Jr., Justice ad hoc
JURISDICTION	Louisiana
DECIDED	December 5, 2018
DOCKET	2018-CA-0728
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct, suspensive appeal by the Louisiana Department of Revenue from a district court summary judgment declaring 2015 La. Acts No. 109 unconstitutional and awarding the taxpayers a refund of taxes paid under protest.
STANDARD OF REVIEW	Summary judgments are reviewed de novo, using the same criteria as the trial court: whether a genuine issue of material fact exists and whether the movant is entitled to judgment as a matter of law. Questions of law are also reviewed de novo, without deference to the district court's legal conclusions.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; binding precedent in Louisiana.
PARTIES	Kimberly L. Robinson, Secretary of the Department of Revenue, State of Louisiana v. Ivan I. Smith, Jr., Gloria G. Smith

TOPICS

income tax | state and local tax | dormant commerce clause | tax refunds | appellate procedure

PRACTICE AREAS

state and local taxation | constitutional law | appellate procedure | tax refunds

QUESTIONS PRESENTED

1. Whether the Texas franchise tax imposed under Texas's 2006 statutory revisions constitutes a net income tax paid to another state for purposes of Louisiana Revised Statutes 47:33 as amended by Act 109.
2. Whether the taxpayers may claim a Louisiana income-tax credit for taxes paid by their pass-through entities even though the taxes were not imposed directly on or paid personally by the individual taxpayers.
3. Whether Act 109 violates the dormant Commerce Clause by denying or limiting credits for income taxes paid to other states and thereby subjecting interstate income to greater taxation than intrastate income.
4. Whether the district court properly granted summary judgment to the taxpayers.

HOLDINGS

1. The Texas franchise tax imposed under the 2006 revisions is a net income tax paid to another state for purposes of Louisiana Revised Statutes 47:33 as amended by Act 109.
2. The fact that a pass-through entity paid the Texas franchise tax does not prevent the individual shareholders or members from claiming the credit under Louisiana Revised Statutes 47:33.
3. Act 109 fails the external-consistency component of the fair-apportionment requirement because it allows Louisiana to tax beyond the portion of interstate income fairly attributable to economic activity within Louisiana and creates a potential for multiple taxation.
4. Act 109 impermissibly discriminates against interstate commerce because it subjects interstate income to double taxation while taxing comparable intrastate income only once.

KEY QUOTATIONS

> *“This tax scheme impermissibly discriminates against interstate commerce and violates the dormant Commerce Clause of the United States Constitution.”* (at 760)

> *“For the above reasons, we hold herein that Act 109 is unconstitutional.”* (at 760)

FACTUAL BACKGROUND

Ivan and Gloria Smith were Louisiana residents and owners of interests in limited liability companies and Subchapter S corporations doing business in Texas, Arkansas, and Louisiana. The pass-through entities paid $23,180 in 2015 Texas franchise taxes based on Texas-sourced income, while the taxpayers were also subject to Louisiana income tax on their income from inside and outside Louisiana. The Department denied the taxpayers' claimed Louisiana credit for the Texas taxes under Act 109, leading the taxpayers to pay $23,180 under protest and seek a refund.

PROCEDURAL HISTORY

Louisiana taxpayers sought recovery of income taxes paid under protest after the Department denied them a credit for Texas franchise taxes paid by pass-through entities in which they held interests. The Nineteenth Judicial District Court granted the taxpayers' motion for summary judgment, declared Act 109 unconstitutional, and awarded $23,180 plus interest. The Department directly and suspensively appealed because the district court had declared a statute unconstitutional.

DISPOSITION

affirmed

CASES CITED

- Perez v. Secretary of Louisiana Department of Revenue & Taxation, 731 So. 2d 406 (La. App. 1 Cir. 1999), writ denied, 743 So. 2d 1256 (La. 1999)
- City of New Orleans v. Scramuzza, 507 So. 2d 215 (La. 1987)
- Comptroller of the Treasury of Maryland v. Wynne, 135 S. Ct. 1787 (2015)
- Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977)
- Oklahoma Tax Commission v. Jefferson Lines, Inc., 514 U.S. 175 (1995)
- Goldberg v. Sweet, 488 U.S. 252 (1989)
- Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450 (1959)
- Moorman Manufacturing Co. v. Bair, 437 U.S. 267 (1978)
- Jackson v. City of New Orleans, 144 So. 3d 876 (La. 2014)
- Louisiana Safety Ass'n of Timbermen-Self Insurers Fund v. Louisiana Ins. Guar. Ass'n, 17 So. 3d 350 (La. 2009)
- Beer Industry League of Louisiana v. City of New Orleans, 251 So. 3d 380 (La. 2018)
- Burmaster v. Plaquemines Parish Government, 982 So. 2d 795 (La. 2008)
- Graphic Packaging Corp. v. Hegar, 538 S.W.3d 89 (Tex. 2017)
- In re Nestle USA, Inc., 387 S.W.3d 610 (Tex. 2012)
- Goggin v. State Tax Assessor, 191 A.3d 341 (Me. 2018)
- J.D. Adams Manufacturing Co. v. Storen, 304 U.S. 307 (1938)
- Gwin, White & Prince, Inc. v. Henneford, 305 U.S. 434 (1939)
- Central Greyhound Lines, Inc. v. Mealey, 334 U.S. 653 (1948)
- Armco Inc. v. Hardesty, 467 U.S. 638 (1984)
- State v. Citizen, 898 So. 2d 325 (La. 2005)

INSTRUCTIONS FOR AN AI ASSISTANT