No. 23-914

In the Supreme Court of the United States

DIANE ZILKA,

Petitioner,

v.

CITY OF PHILADELPHIA, TAX REVIEW BOARD,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Philadelphia's income tax scheme violates the dormant Commerce Clause despite providing credits to offset income tax payments that its residents make to other localities where they work.

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INTRODUCTION

Petitioner lives in Philadelphia, Pennsylvania and works in Wilmington, Delaware. Pennsylvania provides her with a credit to offset her income tax payments to Delaware. Philadelphia provides her with a credit to offset her income tax payments to Wilmington. The question here is whether Philadelphia must also provide her with a further credit to offset the remainder of her Delaware income tax liability (which exists because Delaware has made a choice to adopt a higher state income tax than Pennsylvania). In other words, does Philadelphia have to help subsidize the cost of Petitioner's income tax obligation to Delaware?

As the Pennsylvania Supreme Court correctly held below, the answer to that question is "no": the federal Constitution does not require such a subsidy. Petitioner's heightened tax obligation does not result from discrimination against interstate commerce, but instead from the interaction of two parallel and nondiscriminatory income tax schemes set at different levels. This follows from the Court's ruling in *Comptroller of the Treasury of Maryland v. Wynne*, 575 U.S. 542 (2015), which made clear that state and local taxes are not aggregated for purposes of engaging in dormant Commerce Clause analysis.

The narrow ruling below does not merit review, for four reasons. *First*, the 2-1 split alleged by the Petition is shallow and immature. One of the cases cited by Petitioner was published 25 years ago, addressed the aggregation issue in just a single conclusory sentence with no citations, and predated *Wynne*. The other case was decided in 2016, just a year after *Wynne*, and did not offer any substantive legal analysis of the

aggregation issue. At most, it represents the flimsiest of splits in state authority. Moreover, both cases cited by Petitioner involved use taxes rather than income taxes—and, apart from the decision below, neither of these cases has since been cited by any other state or federal court for their cursory reference to aggregation.

Second, the question raised by the Petition is neither recurring nor important. Here, Petitioner is long on rhetoric but short on examples. There is simply no evidence that anybody, anywhere has slipped down the slope that she imagines. This issue has apparently arisen only a couple times in the past several decades and has not occasioned any notable jurisprudence or political interest. More fundamentally, Petitioner's speculation that states could rely on the decision below to shift significant taxation authority to localities is unjustified: any such effort would require a drastic restructuring of state and local government—both on tax policy and everything else—and would ultimately achieve very little even on Petitioner's own terms. It is therefore unsurprising that the decision below has attracted little attention (apart from a couple law review comments) and provoked even less of a policy reaction.

Third, given the dearth of attention to this issue, further percolation is warranted before the Court revisits constitutional limits on taxing authority and city-state dynamics. That is particularly true following the opinion in *National Pork Producers Council v. Ross*, 598 U.S. 356, 390 (2023), whose implications for dormant Commerce Clause jurisprudence (including in the taxation space) are only just starting to emerge.

Finally, the Pennsylvania Supreme Court's decision was correct. There is no need for error correction.

COUNTERSTATEMENT

We will first summarize controlling principles of constitutional law and then discuss the course of proceedings below that led to the filing of the Petition.

I. THE DORMANT COMMERCE CLAUSE

Under the Commerce Clause of the U.S. Constitution, "Congress shall have Power … To regulate Commerce … among the several States." U.S. Const. art. 1, § 8, cl. 3. Although this is an express grant of power to Congress, the Court has consistently held that the Clause also contains a "negative command, known as the dormant Commerce Clause." *Wynne*, 575 U.S. at 549. As relevant here, the crux of the dormant Commerce Clause is that a state may not "impose a tax which discriminates against interstate commerce either by providing a direct commercial advantage to local business, or by subjecting interstate commerce to the burden of 'multiple taxation.'" *Id.* at 549-50 (quoting *Nw. States Portland Cement Co. v. State of Minn.*, 358 U.S. 450, 458 (1959)).

In *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977), the Court crafted a four-part test for determining whether a state or local tax violates the dormant Commerce Clause. Under that *Complete Auto* framework, a tax must be fairly apportioned, as measured (*inter alia*) by an internal consistency test. *Okla. Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 185 (1995). Simply put, the internal consistency test "looks to the structure of the tax at issue to see whether its identical application by every State in the

Union would place interstate commerce at a disadvantage as compared with commerce intrastate." *Id.*

In *Comptroller v. Wynne*, this Court addressed how the internal consistency test applied to Maryland's personal income tax scheme. Under that scheme, Maryland taxed the income that its residents earned both within and outside the State, as well as the income that nonresidents earned from sources within Maryland, but did not offer its residents a full credit against the income taxes that they owed to other states. *See* 575 U.S. at 545. This tax scheme involved both a "state" income tax (which was set at a graduated rate) and a "county" income tax (which was set at a rate that varied by county with a cap of 3.2%). *Id.* at 546. While these labels suggested separate local and state taxes, the Court took pains to note that the "county" income tax was *really* a state-level tax: "Despite the names that Maryland has assigned to these taxes, both are State taxes, and both are collected by the State's Comptroller of the Treasury." *Id.* By virtue of the fact that the "state" and "county" taxes were actually both state-level taxes levied by the Maryland government, the Court resolved to "evaluate the Maryland income tax scheme as a whole" and to consider Maryland's taxes "as one." *Id.* at 564 n.8. Ultimately, the Court concluded that Maryland's tax scheme offended the internal consistency principle because it was "inherently discriminatory" and operated "as a tariff." *Id.* at 565; *see also id*. at 545-46 (summarizing this holding).

II. PROCEEDINGS BELOW

A. The Department of Revenue

Petitioner resides in Philadelphia, Pennsylvania. During the tax years at issue, she worked full time in Wilmington, Delaware. In 2017, she sought refunds for 2013-2016. During those tax periods, her Delaware employer withheld the following taxes: Philadelphia Tax; Wilmington Earned Income Tax (Wilmington Tax); Pennsylvania Income Tax (PIT); and Delaware Income Tax (DIT). Petitioner claimed a credit for the DIT (5%) to offset the PIT (3.07%); Pennsylvania allowed a full 3.07% credit. Petitioner also claimed a credit for the Wilmington Tax (1.25%) and the balance of the DIT (5% - 3.07% = 1.93%) to offset the Philadelphia Tax (3.92%). The Department allowed a credit for the 1.25% Wilmington Tax against the Philadelphia Tax but not for the 1.93% remainder of the DIT.

B. The Tax Review Board

Petitioner appealed the Department's decision to the Tax Review Board, which unanimously affirmed the Department's position in a 5-0 ruling. The Board was persuaded by the City's commonsense "apple[s] to apples" approach in this context: it agreed that granting credits against the Philadelphia Tax for taxes paid to out-of-state local jurisdictions, but not for taxes paid to other states, was a "reasonable policy in regard to the application of credits." Pet. App. 103a.

C. Common Pleas

Petitioner next sought review in the Court of Common Pleas. The Honorable Paula A. Patrick affirmed the Board's decision: "While[ ] it is true that

[Petitioner] did pay state income taxes in Delaware at a higher rate … than that of her fellow Pennsylvania residents, this is due to the simple fact that [Petitioner] chose to work in Delaware which has a higher income tax rate than Pennsylvania. This higher income tax rate implemented by the state of Delaware is neither unconstitutional, nor attributable to any unconstitutional action taken by the City of Philadelphia." Pet. App. 87a.

D. Commonwealth Court

In an opinion by the Honorable Michael H. Wojcik, the en banc Commonwealth Court unanimously affirmed in a non-precedential opinion on January 7, 2022. Judge Wojcik explained that the dormant Commerce Clause prohibits duplicative taxation and that, "[u]pon review, [Petitioner's] income is not being doubly taxed" because "[Petitioner] never pays more than one local tax or more than one state tax." Pet. App. 72a. Judge Wojcik continued: "Although we recognize that [Petitioner] pays 1.93% more than her intrastate counterparts, that is because [Petitioner] chose to work in Delaware, *which charges a higher income tax than Pennsylvania*." Pet. App. 72a (emphasis original).

E. The Pennsylvania Supreme Court

The Pennsylvania Supreme Court affirmed in an opinion by Chief Justice Debra Todd. Following a thorough survey of the parties' respective contentions, including Petitioner's claim that it was error to treat Philadelphia's taxes separately from Pennsylvania's in the dormant Commerce Clause analysis, the court began by noting that "the question of aggregation for

purposes of a dormant Commerce Clause analysis is a matter of first impression for this Court." Pet. App. 26a.

Next, the court explained that *Wynne* foreclosed Petitioner's contention: "In our view, [*Wynne*'s] logic and characterization of the county tax as a state tax based on the circumstances underlying its creation and the manner of its collection via the state's comptroller reveal that state and local taxes need not be aggregated for purposes of a dormant Commerce Clause analysis." Pet. App. 27a. The court added: "[N]owhere in its comprehensive opinion did the *Wynne* Court endorse the notion that local taxes are essentially a legal fiction, indistinguishable from state taxes." Pet. App. 27a; *see also* Pet. App. 28a (explaining that "nothing in the high Court's teachings … stands for the premise that state and local taxes are broadly indistinguishable …").

Because *Wynne* inquired into whether the "county" tax in Maryland was "truly a local tax" or, instead, a "state tax masquerading as a local tax"—an inquiry that would have been pointless if local taxes were treated the same as state taxes—the Pennsylvania Supreme Court read *Wynne* as confirming "that state and local taxes need not be aggregated for purposes of a dormant Commerce Clause analysis." *Id.* at 26a-27a.

Applying this principle, the Pennsylvania Supreme Court easily upheld the structure of the Philadelphia Tax, which is plainly a local rather than state imposition: it was enacted by the City Council and is administered, collected, and distributed by the Department solely for the benefit of the City and its residents. Pet. App. 27a.

The court made two additional points. *First*, it emphasized that city and state taxes stand on different footing and serve different functions. Although local governments are creatures of statute and derive their authority from the state, Pennsylvania has nonetheless "stressed that '[s]tate taxes stand on a different basis from local levies.'" Pet. App. 28a (quoting *McClelland v. City of Pittsburgh*, 57 A.2d 846, 848 (Pa. 1948)). Specifically, "state taxes 'are essential to the very preservation of the state itself,' whereas local taxes 'are authorized or permitted by the state, not for its actual preservation, but merely to maintain the machinery of local government.'" Pet. App. 28a (quoting *McClelland*, 57 A.2d at 848).

Second, the court addressed out-of-state authorities cited by Petitioner in support of her position (all of which concerned use taxes, not income taxes). The court first noted that an Arizona case requiring aggregation of state and local taxes involved state statutory interpretation rather than a constitutional holding. *See* Pet. App. 29a-30a (discussing *Ariz. Dep't of Revenue v. Ariz. Pub. Serv. Co.*, 934 P.2d 796 (Ariz. Ct. App. 1997)). The court next deemed *General Motors Corp. v. City & County of Denver*, 990 P.2d 59 (Colo. 1999), to be "of limited value" because it contained only one "brief[,] conclusory statement" discussing aggregation. Pet. App. 30a ("Markedly, this brief conclusory statement represents the entirety of the court's reasoning, or lack thereof …."). Finally, the court found that a West Virginia state case provided only "negligible support" to Petitioner because it lacked substantive analysis. Pet. App. 32a-33a (discussing *Matkovich v. CSX Transp. Inc.*, 793 S.E.2d 888 (W. Va. 2016)).

Ultimately, after explaining that aggregation of local and state taxes was not required, the court applied the internal consistency test to the Philadelphia Tax. Specifically, the Pennsylvania Supreme Court "assume[d] that all local taxing jurisdictions adopt[ed] the Philadelphia Tax rate of 3.922% and the City's corresponding practice of crediting taxpayers for local taxes paid to other jurisdictions." Pet. App. 34a. In that hypothetical scenario, "both in-state and out-of-state taxpayers would yield the same tax obligation." Pet. App. 34a. The internal consistency test was therefore satisfied.

The Court further observed that "[i]f neither Philadelphia nor Wilmington imposed a local wage tax, [Petitioner] would have nonetheless paid 1.93% more in income taxes than her Pennsylvania counterparts who worked solely in the Commonwealth, as the DIT rate was 5% while the PIT rate was 3.07%." Pet. App. 35a. But that would not offend the dormant Commerce Clause: it would merely reflect Delaware's constitutionally permissible choice to impose a higher income tax rate than Pennsylvania in this instance. Pet. App. 35a.

Justice Wecht filed a concurring opinion. Justices Dougherty and Mundy dissented.

ARGUMENT

I. THIS COURT'S ESTABLISHED CRITERIA FOR CERTIORARI ARE NOT SATISFIED

Because none of the criteria governing review on certiorari are satisfied, the Petition should be denied.

A. Any Split is Shallow and Immature

Petitioner contends that review is necessary because the decision below created an important split in judicial authority. Her claim is decidedly overstated. To the best of our knowledge, merely three state supreme courts have ever addressed this issue. The two cases cited by Petitioner involved use taxes rather than income taxes and, more significantly, failed to offer *any* substantive constitutional analysis of the aggregation issue. One of those cases was decided 16 years before *Wynne* and was thus uninformed by the Court's most recent guidance on these issues. The other case merely block-quoted some conclusory dicta without any reasoning; that opinion was issued in 2016 and has since been cited only twice (one of those times was the opinion below). This alleged "split" does not cry out for intervention.[1]

Petitioner first cites *General Motors Corp. v. City & County of Denver*, 990 P.2d 59 (Colo. 1999), a case that was issued long before the landmark opinion in *Wynne* (and that involved a use tax rather than a wage tax). Here, in its entirety, is that court's analysis of the aggregation issue: "Internal consistency requires that states impose identical taxes when viewed in the

[1] Petitioner also cites a law review article, but judicial disagreement with a professor's preferred theory is not the stuff of a split.

aggregate—as a collection of state and sub-state taxing jurisdictions." 990 P.2d at 69 (not citing anything). This language from *General Motors* has been quoted exactly twice since the opinion was issued in 1999: in the ruling below and the other case cited by Petitioner.

That other case (also involving a use tax) was issued by the West Virginia Supreme Court in 2016. *See Matkovich v. CSX Transp. Inc.*, 793 S.E.2d 888 (W. Va. 2016). Here, too, the court offered no substantive constitutional analysis of the aggregation issue. Instead, *Matkovich* briefly cited *Wynne*, which it described (objectively incorrectly) as invalidating Maryland's tax scheme because it "did not allow a credit for income tax [that taxpayers] had paid to the county of another state." *Id.* at 896. *Matkovich* then quoted a few lines from *General Motors*—as well as language from an intermediate appellate decision in Arizona addressing a state statutory issue—and asserted that sales tax credits under West Virginia law had to apply "both to sales taxes CSX has paid to other states on its purchases of motor fuel therein and to sales taxes that CSX has paid to the subdivisions of other states when it has purchased motor fuel in such locales." *Id.* at 897.

That's it. Petitioner claims that the decision below created a major split. But this alleged split consists of a single unreasoned line in a 25-year-old case that predates *Wynne* and has been cited only twice, and an equally unreasoned few sentences in a West Virginia case from 2016 that mangled *Wynne* in its cursory discussion and that has not since been relied on by anybody for the aggregation point. *See also* 138 S. Ct. 68 (2017) (denying review of *Matkovich*). To the extent

this qualifies as a split at all, it is exceedingly shallow and immature—and certainly does not merit review.

B. This Issue is Not Important or Pressing

As should now be clear, Petitioner's claim that this case presents a "recurring" question of federal law is materially overstated. Pet. 21. So is Petitioner's claim that this case presents an "important" question. *Id.*

To support that contention, Petitioner raises the specter that the decision below may invite a race among cities and states toward burdens on interstate commerce. But there is a good reason why all those warnings are phrased in conditional terms: no such development has occurred since the decision below was handed down. *See, e.g.*, Pet. 13 ("In addition, the Pennsylvania Supreme Court's decision *could* open the door to rampant state discrimination of interstate commerce …" (emphasis added)). In the same vein, Petitioner's *amici* trade in hypotheticals and conjecture rather than evidence that this decision has had any consequence with broader relevance. *See, e.g.*, NTUF Amicus Br. at 2 (warning—without reference to any new or proposed legislation, or any other concrete development—that the decision below may potentially have "alarming effects if not corrected"); Am. College of Tax Counsel Amicus Br. at 17 (similarly opining—without concrete examples—that "[a]bsent guidance from this Court, the Nation risks a sticky landscape").

Simply put, Petitioner describes a parade of horribles, but there is no evidence of any parade (or even evidence that anybody plans on throwing one). This Court does not ordinarily rush to address issues of

federal constitutional law that have drawn so little scrutiny and produced so little real-world consequence.

That is particularly true where warnings that the sky might fall are misplaced. As we explain below in discussing the merits, Petitioner's claim that Philadelphia's tax scheme discriminates against interstate commerce is unfounded. The higher tax rate that Petitioner has experienced arises "only as a result of the interaction of two different but nondiscriminatory and internally consistent schemes." *Wynne*, 575 U.S. at 562. Under longstanding practice, different states can impose different tax rates. If a taxpayer lives in one state but works in a state with a higher tax rate, the taxpayer may constitutionally be subject to a higher net tax burden than her intrastate counterpart. And that is what happened here. An individual working in Wilmington, Delaware pays 1.93% more because Delaware has chosen a 5.00% DIT while Pennsylvania has chosen a 3.07% PIT. There is no discrimination.[2]

Indeed, although she seeks to bury the point, Petitioner's ultimate concern seems to be with the existence of variation in state and local taxes across city and state lines. This Court has previously observed that the total "prevention of duplicative taxation[ ]

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[2] The Petition (at 19) contains a mathematical error. Petitioner inadvertently asserts that the total in-state income tax of a Philadelphian in Pennsylvania is 6.922%, but 3.07% (the Pennsylvania rate) plus 3.922% (the Philadelphia rate) equals 6.992%. This 0.07% error in differential shows up again when Petitioner inadvertently claims (at 20) that her "total tax liability is thus 2% higher than her intrastate counterpart." Her tax liability is actually 1.93% higher than her intrastate counterpart, not 2% higher.

would require national uniform rules for the division of income." *Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 279 (1978). Yet any such change would be a task for Congress, not the Judiciary. *See id.* at 279-80; *see also Wynne*, 575 U.S. at 577 (Scalia, J., dissenting) ("[A] national tax code plainly exceeds the judicial competence.").

Petitioner separately suggests that this case is different and important because it implicates the interplay between state and local governments. In her view, the ruling below "creates an incentive for states to shift their taxes to the local level and avoid fully crediting their residents for taxes paid to other states on income earned in those states." Pet. at 3.

That argument ignores political reality. There is no world in which state governments would (or in some cases even could) intentionally shift significant taxing power to localities simply to minimize credits. Any such development would require a radical restructuring and diminution of state governments. It would also require a massive expansion of local income taxes, tax collection and processing capacity, and budgetary and policy authority. Moreover, if such newly local taxes would remain subject to offset against all out-of-state local taxes, and if other states were to engage in the same paradigm shift, it is difficult to see why anyone would go through all this trouble to achieve so little.

At bottom, Petitioner's theory is that states and localities nationwide will thoroughly restructure their tax codes and governmental systems in light of the ruling below. There is zero evidence of that occurring. And literally dozens of deeply entrenched political and

policy considerations cut against it. The concerns that Petitioner raises are more resonant of an abstract law school seminar than the realities of government. And the scope of the policy concern here is further cabined by the fact that, in practice, only 16 out of 50 states even authorize the collection of local taxes at all.

In these respects, Petitioner's arguments for the importance of this case miss the mark. The decision below is no watershed. Indeed, it has not yet been cited by *any* court for the proposition here at issue, and it has been remarked upon by only a single law review article (and a single student note). These circumstances do not necessitate this Court's intervention.

C. This Issue Has Barely Ripened

A final and related reason why the Petition should be denied is the near-total absence of percolation. The heart of Petitioner's complaint is that Delaware has chosen a higher tax rate than Pennsylvania, and she would prefer that Philadelphia help her subsidize the difference (even after crediting her Wilmington taxes). To the extent there is a significant constitutional question about aggregation lurking here—as opposed to the ordinary reality of differential tax rates—that issue is novel and barely studied at this early juncture.

As Justice Gorsuch has recognized, there are times when "the crucible of adversarial testing on which we usually depend, along with the experience of our thoughtful colleagues on the district and circuit benches, could yield insights (or reveal pitfalls) we cannot muster guided only by our own lights." *Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring in part); *see also Box v. Planned*

Parenthood of Indiana & Kentucky, Inc., 139 S. Ct. 1780, 1784 (2019) (Thomas, J., concurring).

That principle precisely fits this case. Prior to the opinion below, the aggregation issue had been considered only twice by state high courts—both times in opinions with virtually no substantive analysis. Scholarship and judicial study of the issue are wafer thin and still preliminary following the *Wynne* decision. And a rushed, broad pronouncement by this Court could have disruptive implications for tax systems and state-local government relations in a host of settings.

Moreover, just last year this Court issued a significant opinion concerning the basic orientation of the dormant Commerce Clause. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023). In that opinion, the Court emphasized that enjoining a law on this basis "is a matter of extreme delicacy, something courts should do only where the infraction is clear." *Id.* at 390 (internal quotation marks and citation omitted). The Court also took a step back from a purely effects-based analysis for dormant Commerce Clause infractions (the sole basis noted by Petitioner for her position), highlighting also the significance of discriminatory purpose and recognizing that members of the Court may have different perspectives on the relevance of these considerations. *Id.* at 377-79.

Given that only two state supreme courts have addressed the aggregation issue since *Wynne* (one of them without independent reasoning)—and given the comparative recency of both *Wynne* and *Ross* (both of which arguably have significant implications here)—further judicial and scholarly percolation are warranted. That would also have the benefit of allowing

the Court to see for itself whether the ruling below actually creates any of the (improbable) untoward results that Petitioner and her *amici* speculate might someday occur.

II. THE DECISION BELOW IS CORRECT

For the reasons already given, the decision below does not merit review. There is one further reason why that is true: the decision below was rightly decided.

In its opinion, the Pennsylvania Supreme Court described our explanation for that conclusion, which we stand by. *See* Pet. App. 19a-25a. Most fundamentally, the decision below follows from the Court's analysis in *Wynne*. There, the Court evaluated Maryland's tax scheme, some parts of which involved "state" taxes and other parts of which involved "county" taxes. *See Wynne*, 575 U.S. at 546. If local and state taxes had to be aggregated—as Petitioner contends here—then it would not matter at all whether those labels in fact described taxes levied at the local or state level. The Court could simply have aggregated them and proceeded straight into its constitutional analysis. Instead, the Court undertook an exercise that makes no sense on Petitioner's view: it reviewed the record, as well as principles of state law, and made a point of clarifying that this particular "county" tax was truly a state-level tax: "Despite the names that Maryland has assigned to these taxes, both are State taxes, and both are collected by the State's Comptroller of the Treasury." *Id*. To further support that conclusion, the Court cited Maryland law. *See id.* (citing *Frey v. Comptroller of Treasury*, 29 A.3d 475, 483, 492 (Md. 2011)). This language in *Wynne* (and the analysis underlying it) is inconsistent with a rule of automatic aggregation.

Petitioner responds by highlighting this footnote in *Wynne*: "[W]e must evaluate the Maryland income tax scheme as a whole…. [I]t is immaterial that Maryland assigns different labels … to these taxes. In applying the dormant Commerce Clause, they must be considered as one." 575 U.S. at 564 n.8. But Petitioner fails to follow the Court's statement to its logical conclusion: labels are "immaterial" because what matters is whether a tax is truly assessed at the state or local level, and in *Wynne* the "county" tax was really a state tax, so it had to be considered alongside the other state taxes. Here, the Philadelphia Tax and the Pennsylvania Income Tax are two entirely distinct taxes—authored by different legislatures, administered by different departments, serving different constituencies, and subject to different political pressures. Therefore, under *Wynne*'s own logic, it makes perfect sense to treat them separately.

And, when the Court resolved to "evaluate the Maryland income tax scheme as a whole," and to consider Maryland's taxes "as one," it did so based upon the fact that the "state" and "county" taxes were actually both state-level taxes levied by the Maryland government. *Id.* Therefore, *Wynne* at no point required aggregation of state and county taxes.

More generally, even apart from *Wynne*, the Pennsylvania Supreme Court correctly concluded that the income tax scheme here is constitutional. If every state adopted an identical scheme—with a 3.07% Tax A and a 3.922% Tax B, each of which gives credits for identical taxes paid elsewhere—those who live in one state and work in another would not be double-taxed, as one state's taxes would always be offset by credits

for taxes paid to the other state. Thus, the tax scheme here passes the internal consistency test.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

April 24, 2024

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