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Supreme Court Denies Cert, Allows State Double Taxation on Foreign Income

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Supreme Court Denies Cert, Allows State Double Taxation on Foreign Income

Ellen Hancock[1] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn1)

On February 24, 2020 the Supreme Court of the United States denied certiorari on a case concerning Utah's tax statute which subjects foreign-earned income to double taxation.[2] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn2) The taxpayers in this case were shareholders of Steiner, LLC, a subchapter S corporation, that from 2011-13 generated 2% of its income from activities within Utah and 98% from "interstate and foreign business activities." [3] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn3) Under the Utah tax code, income is taxed at a flat rate no matter the country of origin.[4] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn4) To prevent double-taxation, Utah offers its residents a credit for the taxes paid on income tax paid in other state; however, these same credits are not offered for income tax paid on income generated in foreign jurisdictions.[5] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn5) At the Utah Supreme Court, the taxpayers argued that the foreign-earned income should be excluded under Utah Code Ann. § 59-10-115(2), which allows equitable adjustments in the Utah tax code to be made on an individualized nature, because taxing this income would subject the Steiners to double taxation.[6] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn6) However, the Utah Supreme Court voted 5-0 against the taxpayers.[7] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn7)

This decision surprised many because of the previous U.S. Supreme Court decisions *Comptroller v. Wynne* and *Kraft v. Department of Revenue*. [8] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn8) In *Wynne*, the Court looked at a Maryland tax case in which the taxpayers were shareholders of Maxim Healthcare Services, a company that filed tax returns in 39 states through its shareholders. [9] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn9) The taxpayers had included the tax that they had paid for *Wynne* in other states in calculating their Maryland county taxes, where they were residents, which the Maryland tax

court rejected.[10] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn10) However, the Court found that the Maryland tax system, which did not allow credits for tax paid in other states, violated the dormant Commerce Clause because it discriminated against interstate commerce.[11] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn11) Likewise, the Supreme Court's decision in *Kraft* is even more distinctly in contrast with *Steiner*. In 1992, the Supreme Court looked at an Iowa tax statute which did not allow a tax credit for foreign-earned income.[12] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn12) Significantly, in *Kraft* the Court even expanded upon their decision stating that foreign income and commerce should be afforded even "greater protection from discrimination than interstate commerce." [13] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn13)

Looking at these decisions it's hard to see why the Supreme Court would deny certiorari on the Utah Supreme Court's decision in *Steiner*, which seems to directly contradict *Wynne* and *Kraft*. These cases represent the Supreme Court's repeated commitment to avoiding double taxation which the *Steiner* case explicitly authorizes. Likewise, aside from going against the Supreme Court precedent, the decision to double-tax foreign income seems unfair and counter-productive. For example, if businesses are going to be subject to income tax in more than one jurisdiction, it could make international business too expensive to operate and could impair economic growth.[14] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn14) It is also inequitable for any Utah business owners who already pay income tax on their income earned in the state, to have to be subjected to additional tax on their foreign income that has already had taxed pay on it. This not only disincentivizes any benefits that may come to United States tax payers who may be doing business abroad at a lower income tax rate, but also takes it a step further and penalizes them for bringing more income from foreign countries into the United States.

Based on the Supreme Court denying certiorari in *Steiner*, it appears that at least for a while the Supreme Court is going to allow policies that subject foreign income for double taxation. However, in the meantime, it is important to note that for federal income tax, credits already exist for tax paid on foreign income to prevent this type of unfair and illogical treatment.[15] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_edn15)

[1] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref1) Staff Editor, *Kentucky Law Journal*, Volume 108; J.D. Candidate, The University of Kentucky J. David Rosenberg College of Law; B.A., Miami University of Ohio (2017).

[2] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref2) *Steiner v. Utah State Tax Commission*, SCOTUS Blog (Feb. 24, 2020), <https://www.scotusblog.com/case-files/cases/steiner-v-utah-state-tax-commission/> (<https://www.scotusblog.com/case-files/cases/steiner-v-utah-state-tax-commission/>).

[3] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref3) *Court: Utah Tax Structure Treatment Violates Foreign Commerce Clause, Grant Thornton (Jan. 10, 2020)* [hereinafter Grant Thornton], <https://www.granthornton.com/library/alerts/tax/2019/SALT/U-Z/UT-tax-structure-violates-foreign-commerce-clause-01-09.aspx#foot-note> (<https://www.granthornton.com/library/alerts/tax/2019/SALT/U-Z/UT-tax-structure-violates-foreign-commerce-clause-01-09.aspx#foot-note>).

[4] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref4) *Id.*

[5] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref5) *Id.*

[6] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref6) Bruce P. Ely & Steven N. Wlodychak, *Utah Court Refuses to Extend Protections of Foreign Commerce Clause to Individuals*, Bradley (Sept. 17, 2019), <https://www.bradley.com/insights/publications/2019/09/utah-court-refuses-to-extend-protections-of-foreign-commerce-clause-to-individuals> (<https://www.bradley.com/insights/publications/2019/09/utah-court-refuses-to-extend-protections-of-foreign-commerce-clause-to-individuals>).

[7] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref7) *Id.*

[8] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref8) Grant Thorton, *supra* note 3.

[9] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref9) Comptroller of the Treasury of Maryland v. Wynne, 135 S. Ct. 1787 (2015).

[10] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref10) *Id.*

[11] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref11) *Id.*

[12] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref12) Kraft Gen. Foods v. Iowa Dep't of Revenue & Fin., 505 U.S. 71 (1992).

[13] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref13) Ely & Wlodychak, *supra* note 6.

[14] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref14) Julia Kagan, Double Taxation, Investopedia (Aug. 20, 2019), https://www.investopedia.com/terms/d/double_taxation.asp (https://www.investopedia.com/terms/d/double_taxation.asp).

[15] (applewebdata://1ACCCFFD-E38E-471A-B6BC-5E3B38199679#_ednref15) Foreign Tax Credit, IRS (Dec. 20, 2019), <https://www.irs.gov/individuals/international-taxpayers/foreign-tax-credit> (<https://www.irs.gov/individuals/international-taxpayers/foreign-tax-credit>).

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