**No. 13-485**

In The

**Supreme Court of the United States**

Maryland State Comptroller of the Treasury,

*Petitioner*,

v.

Brian Wynne, *et ux*,

*Respondents*.

**On Petition for a Writ of Certiorari to the
Court of Appeals of Maryland**

**BRIEF OF THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER**

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**QUESTION PRESENTED**

Whether a state may tax all the income of its residents, wherever earned, or whether the Constitution requires that it allow a dollar-for-dollar credit for all income taxes paid by those residents to other states?

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# INTEREST OF AMICUS CURIAE[[1]](#footnote-1)

 The International Municipal Lawyers Association (IMLA) is a non-profit, nonpartisan professional organization consisting of more than 2500 members. The membership is comprised of local government entities, including cities, counties and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. IMLA serves as an international clearinghouse of legal information and cooperation on municipal legal matters. Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties and special districts.

 IMLA’s mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme Court, the Unites States Courts of Appeals, and in state supreme and appellate courts.

 IMLA respectfully submits this brief on behalf of the thousands of state subdivisions—counties, cities, townships and other municipalities—that operate under our system of federalism to collect local income taxes that fund their provision of vital services to residents. The implications of the Maryland Court of Appeals ruling for many of those municipalities is dire: if every state is required to accord its residents a dollar-for-dollar credit for all income taxes paid to out of state recipients (including counties and cities in other states), the flow of funds to in-state municipalities will be vastly curtailed. There are many states with long-established tax programs that, like Maryland’s, do not afford dollar-for-dollar credits to residents for all out-of-state income taxes paid and are operating on a premise of constitutional viability.

The constitutional principle relied on to produce the Court of Appeals’ decision—the dormant Commerce Clause—is not the bright-line mandate discerned by that court. There are numerous precedents counseling a different result and factual nuances defying doctrinal answers.

 The issue at hand also involves a conflict between a most basic principle of state sovereignty – the right of a state to tax a person resident within its boundaries, which has been recognized throughout the history of this Court–and the unwritten, amorphous and arbitrary concept of “dormant” Commerce Clause jurisprudence.

**SUMMARY OF ARGUMENT**

The Court should grant certiorari in this case because the Maryland Court of Appeals decision conflicts with other state court decisions and because this is an important issue of federalism that has not been authoritatively decided by this Court. This case places before the Court the important question of whether a state may tax all the income of its residents, wherever earned, or whether it is constitutionally mandated to allow a dollar-for-dollar credit for all income taxes paid by those residents in other states.

 At issue is the degree to which individual states may exercise their sovereign prerogative to raise revenues. If the Court of Appeals is correct, the dormant Commerce Clause requires that states and their subdivisions re-write their tax codes and continue to provide essential services to residents who may pay little or nothing for them.

 Historically, this Court has recognized a State’s unlimited authority to tax its residents provided the tax is on property within the state or on privileges enjoyed there. [*Lawrence v. State Tax Comm*., 286 U.S. 276, 279-280 (U.S. 1932)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=le&search=286+U.S.+276%2520at%2520279). No one can argue that the taxpayer in this case enjoyed limited privileges in his home county. In 2010, Money Magazine rated the Columbia/Ellicott City (Howard County’s main population center) the 2nd best place to live in the United States.[[2]](#footnote-2) The County’s library system ranks as one of the 5 best in the country and the County benefits from numerous other accolades for its services and its community.[[3]](#footnote-3) These awards reflect the County’s commitment to excellence and its taxpayers’ willingness to spend money on services that achieve excellence. And, all of those revenues flow from the County’s multiple sources of tax revenues including its income tax.

 The decision by the Maryland Court of Appeals departs from this foundation and it instead bases its decision on different principles:

1. First, in order to avoid substantial interference in interstate commerce, the dormant Commerce Clause of the United States Constitution *requires* every state and subdivision thereof to give its residents a full tax credit for all income taxes paid in another state or subdivision; and
2. Second, the receipt of Subchapter S pass-through income in Maryland is “interstate commerce” which is being substantially affected by Maryland’s tax structure, in violation of the dormant Commerce Clause.

 Although this Court has repeatedly confirmed that a State may tax income of its residents without regard to source, the specific question of whether a State must offer a credit to its residents for all income taxes paid to another jurisdiction has never been decided.

 Cases below and the Court’s own precedents assessing tax issues in light of the dormant Commerce Clause lead to divergent conclusions. While traditional dormant Commerce Clause analyses function effectively in cases where a state has clearly acted, typically as a market regulator, to favor in-state competitors, the analysis in the arena of state and local personal income taxation where the taxation is not facially discriminatory is more nuanced.

 The Court of Appeals’ decision implies that any state whose tax code does not grant a full credit for all income taxes paid by residents to other jurisdictions is void *ab initio*. The analysis behind this conclusion is a hypothetical where a worker making $100,000 per year might pay an additional $12 per week in Maryland taxes when working half-time in another jurisdiction. This difference, says the Court of Appeals, stifles interstate commerce and requires dismantling of Maryland’s income tax laws. The many other states and local governments that decline to give full credit for all income taxes paid in other jurisdictions will face the same imperative.

 This result is inconsistent with state sovereignty and is not mandated by the Constitution.

##  REASONS FOR GRANTING THE PETITION

 This Court should grant certiorari to settle what has become a murky area of the law pitting the decision of the Maryland Court of Appeals against decisions of courts in other states and resolving the important federal question of the extent to which the dormant Commerce Clause should chip away at a State’s most basic sovereign power: that of taxing its residents.

**ARGUMENT**

##  THE MARYLAND COURT’s OF APPEALS DECISION is not mandated by the constitution and conflicts with numerous contrary holdings in other states

 The Court of Appeals’ conclusion that a state must, under the imperatives of the dormant Commerce Clause, grant its residents a complete tax credit for every dollar of income tax paid to another state is not mandated by the Constitution. The Maryland court does not cite a single precedent for the proposition that the United States Constitution unambiguously *requires* every state to grant a full credit to its residents for all income taxes they may pay to every other state. The reason for this void is that there is no such case. As Professor Hellerstein, often cited by this Court and many courts around the country, states “The question then arises as to whether the Commerce Clause requires Resident State nevertheless to grant a credit for taxes that Source State has permissibly imposed in order to avoid the resulting risk, if not actuality, of multiple taxation. ***The answer to this question is by no means clear***, because it involves the reconciliation of two Commerce Clause principles that are in some tension with one another.” *Hellerstein*, State Taxation: 3rd Edition, ¶ 20.10[2][b] (emphasis added).

 The ambiguity surrounding this issue is even more apparent when the Maryland Court’s of Appeals holding is reviewed in the context of out-of-state tax credit decisions in other jurisdictions. For example, New York’s highest court has expressly found that an individual taxpayer residing in one state who is disallowed a tax credit for income taxes paid in another state does NOT implicate interstate commerce or the dormant Commerce Clause. *Tamagni v. Tax Appeals Tribunal,* 695 N.E.2d 1125 (N.Y. 1998). As the court said there, “[t]he New York income tax operates to tax residents as residents of this State, without regard to their activities in other states; so long as this State’s definition of resident does not violate due process (and there is no claim here that it does), no violation of the dormant Commerce Clause is apparent.” (*Id*. at 1134). Similarly, the Supreme Court of Connecticut has held that the dormant Commerce Clause does not invalidate Connecticut’s failure to allow a credit for income taxes paid out of state. *Chase Manhattan Bank v. Gavin*, 249 Conn. 172, 733 A2d 782, 805 (1999). In *Christman v. Franchise Tax Bd*., 64 Cal. App. 3d 751, 131 Cal. Rptr. 725, 732 (2d Dist. 1976); the California Court of Appeals upheld that state’s denial of a credit for income taxes paid by a California resident on Subchapter S income generated in Georgia.[[4]](#footnote-4) Likewise in *Boone v. Chumley*, 372 S.W.3d 104 (2011)**,** the Tennessee court of appeals upheld a denial of credit for Tennessee residents who paid taxes to South Carolina on Subchapter S income and held that Tennessee’s refusal to provide a credit did not violate the dormant Commerce Clause. As the foregoing demonstrates, “[n]either the federal nor state constitutions require a state to provide an income tax credit for income taxed by a foreign jurisdiction” but that rather, a “[c]redit is a matter of grace and a state may impose conditions on its application.” *Laurite v. Director, Division of Taxation*, 12 N.J. Tax 483, 492 (1992),

This Court, too, has previously discussed the dormant Commerce Clause vis a vis a state’s income tax scheme. Addressing the State of Mississippi’s income tax on the income of a resident who earned income in Tennessee, the Court recognized the authority of the State to tax out of state income and gave convincing support for doing so:

 The obligation of one domiciled within a state to pay taxes there, arises from unilateral action of the state government in the exercise of the most plenary of sovereign powers, that to raise revenue to defray the expenses of government and to distribute its burdens equably among those who enjoy its benefits. Hence, domicile in itself establishes a basis for taxation. Enjoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable from the responsibility for sharing the costs of government. *See* *Fidelity & Columbia Trust Co. v. Louisville*, 245 U.S. 54, 58; *Maguire v. Trefry*, 253 U.S. 12, 14, 17; *Kirtland v. Hotchkiss*, 100 U.S. 491, 498; *Shaffer v. Carter*, 252 U.S. 37, 50.

 The Federal Constitution imposes on the states no particular modes of taxation, and apart from the specific grant to the federal government of the exclusive [\*280] power to levy certain limited classes of taxes and to regulate interstate and foreign commerce, it leaves the states unrestricted in their power to tax those domiciled within them, so long as the tax imposed is upon property within the state or on privileges enjoyed there, and is not so palpably arbitrary or unreasonable as to infringe the Fourteenth Amendment. *Kirtland v Hotchkiss*, supra.

[*Lawrence v. State Tax Comm*., 286 U.S. 276, 279-280 (U.S. 1932)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=le&search=286+U.S.+276%2520at%2520279).

In follow up to the *Lawrence* Court’s acknowledgement that a state has unrestricted power to tax those domiciled within the state “*so long as the tax imposed is . . . on privileges enjoyed there”,* the Howard County, Maryland Budget[[5]](#footnote-5) helps explain the importance of the local income tax to its ability to provide services to its residents. For FY 2014, the income tax makes up 23.36% of its revenues. Applied to a budget of almost $1.6 Billion, the income tax amounts to about $373 Million. These revenues fund a host of privileges enjoyed by the taxpayers. What privileges do these revenues fund? In the FY 2014 Budget, the expenditures are divided up among various broadly defined programs with education being the greatest recipient of funding: roughly 57% of the total budget. In the case before the Court, the taxpayer has five school age children, all of whom could be enjoying these privileges. The taxpayer also enjoys a commitment to public safety - 13% of the budget; public facilities – 10% of the budget; a legislative and judicial system – 1% of the budget; community services – 5% of the budget and so on.

In Montgomery County, Maryland, the income tax is closer to 29% of the County’s revenue stream and amounts to an estimated $1.299 Billion Dollars in FY 14.[[6]](#footnote-6) Like Howard County, Montgomery County uses these revenues for a host of projects.[[7]](#footnote-7) Among the projects are over $36 Million to fund affordable housing initiatives; address mounting traffic congestions with transportation solutions; provide for the educational needs of over 151,000 K-12 students; address storm water management failures in its MS4 systems; and increase by 120 the number of police officers serving the community among a host of other initiatives, programs and services befitting one of the most diverse, populous and wealthy communities in the country.[[8]](#footnote-8)

Regardless of where a person’s income derives, the person’s income measures a basis of taxation generally used to fund public services. Clearly, some people are taxed for services that they do not currently use – seniors do not generally use the educational system; while younger families rely less on some community services than do older residents. Nevertheless, despite a tax’s lack of direct nexus to the services rendered, local taxes have existed since the beginnings of the Republic in various forms and for various purposes and as the Court in *Lawrence* points out find constitutional support if their nexus lies in the common privileges accorded all resident taxpayers. The Maryland Court’s of Appeals decision drifts from this long standing principle and conflates the negative Commerce Clause jurisprudence following *Complete Auto* that involves franchise taxes with the income tax – the franchise tax - a tax on doing business in the state and the income tax - a tax on wealth from whatever source. Indeed, the Court in *Complete Auto* affirms through citation to previous authority and in its holding the basic principles set out in *Lawrence*, that a tax on the privileges enjoyed by a resident taxpayer are not subject to invalidity under the negative Commerce Clause.

##  THE MARYLAND COURT’s OF APPEALS DECISION undermines state sovereignty

 The Maryland Court’s of Appeals decision obstructs the State’s power of taxation, a fundamental incident of State sovereignty recognized since the time of *McCulloch v. Maryland*, 17 U.S. 316 (1819) that unambiguously permits a state to tax *all* the income of its residents wherever derived. *Oklahoma Tax Comm. v. Chicasaw Nation,* 515 U.S. 450 (1995). In requiring that states grant credits for all income taxes paid out-of-state, the court undermines the prerogative of states and their subdivisions to enact a diversity of mechanisms and structures that collect revenues sufficient to provide the public services for which they are responsible. *Shaffer v. Carter*, 252 U.S. 37 (1920).

 If a policy is to be effected requiring every state in the nation to credit income taxes paid by residents to every other state, such action should come from Congress itself. Otherwise, deference to state sovereignty requires that some discontinuities survive. This Court has previously explained, in a decision rendered after *Complete Auto*, that the dormant Commerce Clause does not definitively prevent all overlap in taxation in income. *See Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 278-79 (1978). In holding that a constitutional ban on double taxation is inappropriate, this Court explained:

If the Constitution were read to mandate [a prohibition of any overlap in the computation of taxable income by the States], the consequences would extend far beyond this particular case. *For some risk of duplicative taxation exists whenever the States in which a corporation does business do not follow identical rules for the division of income*…

While the freedom of the States to formulate independent policy in this area may have to yield to an overriding national interest in uniformity, the content of any uniform rules to which they must subscribe should be determined only after due consideration is given to the interests of all affected States. *It is clear that the legislative power granted to Congress by the Commerce Clause of the Constitution would amply justify the enactment of legislation requiring all States to adhere to uniform rules for the division of income. It is to that body, and not this Court, that the Constitution has committed such policy decisions.*

*Id.* (emphasis added).

 The far-reaching implications of the decision of the Maryland Court of Appeals on state sovereignty are not hypothetical. While seven states have chosen not to tax personal income at all, the remaining forty-three states and the District of Columbia levy a tax on personal income. So do nearly 5,000 state subdivisions—counties, cities and special districts around the country, many of which are IMLA members.[[9]](#footnote-9) Each of Maryland’s counties assesses an income tax, at rates from 1.25% to 3.2%.[[10]](#footnote-10) So too do Indiana’s 92 counties, assessing income taxes at rates up to 3.13%.[[11]](#footnote-11) In Ohio, 593 municipalities and 181 school districts assess such a tax;[[12]](#footnote-12) as do 2,469 municipalities and 469 school districts in Pennsylvania.[[13]](#footnote-13). Many cities and school districts in Iowa and Michigan also assess these taxes.[[14]](#footnote-14) Major cities frequently charge income taxes; Philadelphia’s resident income tax is 3.924% on residents and 3.495% on non residents.[[15]](#footnote-15)

 These municipalities have enacted statutes to collect taxes from individuals and businesses, whether resident or non-resident, which generate revenues and income within their boundaries and thereby benefit from the governmental infrastructure which allows such activity to flourish. Local jurisdictions have the burden of providing these residents a multitude of services including police and fire protection, schools, roads, water, trash collection, building inspection, land use zoning and planning, and the promotion of culture and entertainment. The prerogative of states to authorize a diversity of taxing mechanisms to fund these benefits is unquestioned. *Shafffer, supra*.

 The mischief inherent in the Maryland Court of Appeals’ decision arises from the fact that ***many states and municipalities do not grant a complete credit to their residents for all income taxes paid in other states and municipalities.*** For example, Arizona’s Form 309 (“Credit for Taxes Paid to Another State or Country”) states: “Important—As an Arizona resident, nonresident returns filed with the following states DO NOT QUALIFY for the credit: Alaska, California, District of Columbia, Florida, Indiana, Nevada, New Hampshire, Oregon, South Dakota, Tennessee, Texas, Virginia, Washington and Wyoming.” Seven of the named states charge some form of income tax on nonresidents.[[16]](#footnote-16) Indeed, many major cities and counties impose a tax on residents without allowing a credit for taxes paid out of state (though some do allow a credit for taxes paid to another municipality), including Philadelphia, Cleveland, Detroit, Indiana’s counties, Kansas City, Missouri, St. Louis, and Wilmington.[[17]](#footnote-17) As Philadelphia’s income tax web site explains: “The Earnings Tax is a tax on salaries, wages, commissions and other compensation paid to an employee who is employed or renders services to an employer. *The City of Philadelphia is not a party to any reciprocal tax agreements with any other municipality. Non-residents of Pennsylvania cannot claim a tax credit against Philadelphia Earnings Tax for income taxes paid to any other state or political subdivision. Residents of Philadelphia employed outside of Pennsylvania may be required to file and pay a local income tax in that jurisdiction in addition to Philadelphia Earnings Tax*.” (*emphasis added*).[[18]](#footnote-18) Numerous other jurisdictions, including North Carolina and Wisconsin, *expressly disallow* credits for county, city or other local income taxes paid out of state.[[19]](#footnote-19) And, while not directly on point, other states disallow deductions for gross receipts taxes paid out of state.[[20]](#footnote-20)

 The implications of the Maryland decision for state and local sovereignty are sobering: Every taxpayer of every description in states that do not allow full credit for out-of-state taxes paid —whether individual, partnership, C-corporation, S-corporation or any other—may be incentivized to resist paying its fair share of taxes.[[21]](#footnote-21) The Constitution cannot be construed to instigate a taxpayer revolt in every instance where one state does not afford a complete income tax credit for taxes paid in another jurisdiction. [[22]](#footnote-22)

 IMLA respectfully submits that these issues warrant the Court’s review.

**CONCLUSION**

For the foregoing reasons, and those in the petition, the Court should issue a writ of certiorari and reverse the judgment below.

Respectfully submitted.

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November 18, 2013

1. No counsel for any party to these proceedings authored this brief, in whole or in part. No entity or person, aside from *amicus* or its members, paid for or made any monetary contribution toward the preparation or submission of this brief. *Amicus curiae* files this brief with the written consent of all parties, copies of which are on file with the Clerk’s Office. All parties received timely notice of *amicus*’ intent to file this brief. [↑](#footnote-ref-1)
2. <http://money.cnn.com/magazines/moneymag/bplive/2010/snapshots/PL2419125.html> [↑](#footnote-ref-2)
3. [http://en.wikipedia.org/wiki/Howard\_County,\_Maryland](http://en.wikipedia.org/wiki/Howard_County%2C_Maryland) [↑](#footnote-ref-3)
4. *Christman* was decided before California recognized S corporation status, the corporation was a C corporation for California purposes, and the court regarded the income in issue as dividends. *Valentino v. Franchise Tax Bd.,* 87 Cal. App. 4th 1284, 105 Cal. Rptr. 2d 304 (4th Dist. 2001), distinguished *Christman* on this ground under California tax law, but the decision in *Christman* construing the dormant Commerce Clause’s effect upon the state’s duty to grant tax credits continues in stark contrast to the decision of the Maryland Court of Appeals. [↑](#footnote-ref-4)
5. The Howard County Budget for FY 2014 is available through the County’s website at: http://www.howardcountymd.gov/departments.aspx?ID=499. [↑](#footnote-ref-5)
6. Montgomery County Revenue Schedule for FY 14 available at: http://www.howardcountymd.gov/departments.aspx?ID=499 [↑](#footnote-ref-6)
7. Highlights of the County’s FY14 Budget are available at: http://www.montgomerycountymd.gov/OMB/Resources/Files/omb/pdfs/fy14/psp\_pdf/psp\_highlights.pdf [↑](#footnote-ref-7)
8. Id. [↑](#footnote-ref-8)
9. <http://taxfoundation.org/article/local-income-taxes-city-and-county-level-income-and-wage-taxes-continue-wane> (last accessed November 10, 2013). [↑](#footnote-ref-9)
10. st accessed November 11, 2013). [↑](#footnote-ref-10)
11. <http://www.in.gov/dor/files/dn01.pdf> (last accessed November 9, 2013). [↑](#footnote-ref-11)
12. Tax Foundation, *supra* note 2. [↑](#footnote-ref-12)
13. *Id*. [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. *Id.* [↑](#footnote-ref-15)
16. Alaska, Florida, Nevada, Texas, South Dakota, Washington and Wyoming do not charge personal income taxes. [↑](#footnote-ref-16)
17. *See* <http://www.ccatax.ci.cleveland.oh.us/Y2013/muniit.pdf> (last accessed November 11, 2013); [http://www.legislature.mi.gov/(S(mphllz55322neouolpmmk2ik))/mileg.aspx?page=getobject&objectname=mcl-284-1964-2](http://www.legislature.mi.gov/%28S%28mphllz55322neouolpmmk2ik%29%29/mileg.aspx?page=getobject&objectname=mcl-284-1964-2) (last accessed November 11, 2013); <http://www.in.gov/dor/reference/files/ib32.pdf> (last accessed November 11, 2013); <http://kcmo.org/idc/groups/finance/documents/finance/rd-109.pdf>; <http://www.slpl.lib.mo.us/cco/code/data/t0522.htm> (last accessed November 11, 2013); <http://www.wilmingtonde.gov/government/earnedincometax> (last accessed November 11, 2013); <http://www.phila.gov/Revenue/businesses/taxes/Pages/WageTax.aspx> (last accessed November 11, 2013). [↑](#footnote-ref-17)
18. <http://www.phila.gov/Revenue/individuals/taxes/Pages/EarningsTax.aspx> (last accessed November 11, 2103). [↑](#footnote-ref-18)
19. Wisconsin expressly disallows a credit for income taxes paid to a county in another state. <http://www.revenue.wi.gov/pubs/pb125.pdf> (last accessed November 9, 2013). ADD NORTH CAROLINA CITE [↑](#footnote-ref-19)
20. Massachusetts expressly disallows credits for gross receipts taxes:”**Gross Receipts Based Taxes:**“This credit extends only to those taxes that are imposed on net income; the credit does **not** extend to taxes based on or derived directly from gross receipts.
Gross receipts based taxes include: GRT, Washington Gross Receipts Tax; GMT, Texas Gross Margin Tax; CAT, Ohio Commercial Activity tax. Gross receipts-based taxes like the GRT, GMT and CAT are each taxes imposed for the privilege of doing business in a state. These taxes are **not** based on income and are due whether a business is profitable or not. Therefore, these taxes are not in the nature of net income taxes imposed on taxpayers, either directly or by imposition on pass-through entities in which the taxpayers are members.” <http://www.mass.gov/dor/individuals/filing-and-payment-information/guide-to-personal-income-tax/credits/income-tax-paid-to-another-jurisdiction-credit.html#Scorp> (last accessed November 9, 2013). The Washington State Gross Receipts Tax on services is 1.5% of receipts; it bears no relation to income. [↑](#footnote-ref-20)
21. Within weeks after the Court of Appeals’ decision, a major accounting firm began promoting in its web site that all Maryland residents (irrespective of any S-corporation affiliation) who paid any income taxes out-of-state in 2009 should file a “protective refund claim” for their 2009 Maryland income taxes and be prepared to file similar claims for subsequent years. [www.dhgllp.com/res\_pubs/Protective-Refund-Claims.pdf](http://www.dhgllp.com/res_pubs/Protective-Refund-Claims.pdf) (last accessed November 11, 2013). [↑](#footnote-ref-21)
22. As with *Moorman Mfg. Co.,* if the Maryland Court of Appeals is correct and a dollar-for-dollar credit is constitutionally required, the ramifications are far more extensive than simply invalidating Maryland’s tax regime. Not only would all state and local tax laws that do not provide a 100% credit for taxes paid out of state be stricken, but a judicial inquiry into states’ various tax codes would logically ensue. *See Moorman Mfg. Co.,* 437 U.S. at 278-79. For example, as this Court explained, “there is diversity [among states] in the definition of nonbusiness income and in the designation of the locations to which it is deemed attributable. The potential for attribution of the same income to more than one State is plain.” *Id.* at 279. [↑](#footnote-ref-22)