

# **Bond Case Briefs**

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## **TAX - LOUISIANA**

### **Smith v. Robinson**

**Supreme Court of Louisiana - December 5, 2018 - So.3d - 2018 WL 6382118 - 2018-0728 (La. 12/5/18)**

Taxpayers, Louisiana residents and owners of several limited liability companies (LLC) and Subchapter S corporations that transacted business in Texas, Arkansas, and Louisiana, brought action seeking recovery of income taxes paid under protest.

The District Court found that Act amending State income tax statute violated the dormant Commerce Clause. The Department of Revenue appealed.

The Supreme Court of Louisiana held that:

- Taxpayers' payment of a Texas franchise tax constituted a net income tax imposed by and paid to another State for purposes of entitlement to resident income tax credit;
- Statute governing entitlements to resident income tax credits for income taxes paid to another State failed the fair apportionment test for determining the validity of a state tax under the dormant Commerce Clause; and
- Statute governing entitlements to resident income tax credits for income taxes paid to another State impermissibly discriminated against interstate commerce, in violation of the dormant Commerce Clause.

Payment of a Texas franchise tax by taxpayers, Louisiana residents who were owners and members of several limited liability companies (LLC) and S corporations, pass-through entities that transacted business in Texas, Arkansas, and Louisiana, constituted a "net income tax" imposed by and paid to another State for purposes of entitlement to resident income tax credit in Louisiana; the Texas franchise tax was essentially imposed on an income basis, the payment of the tax was made by pass-through entities doing business in Texas, but the credit was being claimed by individual shareholders and members.

Statute governing entitlements to resident income tax credits for income taxes paid to another State failed the fair apportionment test for determining the validity of a state tax under the dormant Commerce Clause; the statute, as amended, failed to fairly apportion the tax according to each state's relation to the income since no credit was given with respect to taxes paid on income earned from sources in Texas, which created the potential for multiple taxation of the same income.

Statute governing entitlements to resident income tax credits for income taxes paid to another State, which failed to give credit to resident taxpayers with respect to taxes paid by pass-through entities on income from sources in Texas, impermissibly discriminated against interstate commerce, in violation of the dormant Commerce Clause; the statute, as amended, resulted in the double taxation of interstate income as compared with the taxation of intrastate income, which created an incentive for taxpayers to opt for intrastate, rather than, interstate economic activity.

