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No. 13-485

In the Supreme Court of the United States

COMPTROLLER OF THE TREASURY OF MARYLAND,
PETITIONER

v.

BRIAN WYNNE, ET UX.

*ON WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND*

**BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER**

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QUESTION PRESENTED

The State of Maryland funds county-level services in part through taxes on the income of each county's residents. The question presented is as follows:

Whether the Commerce Clause entitles Maryland residents to reduce or eliminate their residential county income-tax obligation based on their payment of income taxes to other States in which they do not reside.

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INTEREST OF THE UNITED STATES

At the invitation of the Court, the United States filed a brief as amicus curiae at the petition stage of this case.

STATEMENT

1. The State of Maryland funds its operations in part through taxes on the income of its residents. Pet. App. 4-5. Each resident is subject to a general state income tax at a rate specified by the legislature. Md. Code Ann. Tax-Gen. §§ 10-102, 10-105(a) (LexisNexis 2010) (Md. Tax Code). Each resident is also subject to a county income tax at a rate not to exceed 3.2%, as specified by the county where he is domiciled or has a principal place of residence at the end of the taxable year. *Id.* §§ 10-103(a)(1), 10-106. Both taxes are collected by petitioner, Maryland's Comptroller of the

Treasury, who then distributes the proceeds of the county income tax to the appropriate counties. Pet. App. 5.

If a Maryland resident earns income in another State, the income may also be subject to taxation in that State. In addition to imposing income (and other) taxes on its own residents, a State may tax the income that nonresidents earn within its borders. See, *e.g.*, *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U.S. 450, 463 n.11 (1995) (citing *Shaffer* v. *Carter*, 252 U.S. 37, 57 (1920)). Maryland imposes its state income tax (along with a special nonresident tax in place of the county tax) on income earned in Maryland by nonresidents. Md. Tax Code §§ 10-102, 10-106.1; see Pet. App. 4-5; Pet. Br. 3-4 & n.2.

Just as Maryland taxes the income of nonresidents that is earned within the State, Maryland residents' out-of-state income may be taxed by the States in which it is earned. Maryland generally grants its residents a credit, in an amount equal to the income taxes paid to other States, against the Maryland state income tax they would otherwise owe on income earned in those States. Md. Tax Code § 10-703(a). For example, if a Maryland resident has a state-income-tax rate of 5% and earns all of his income in another State with an income-tax rate of 4%, his effective Maryland state-income-tax rate is 1%.

Maryland does not offer a similar tax credit for its county income tax. Md. Tax Code § 10-703(a); see Pet. App. 7. As a result, a Maryland resident who has paid out-of-state income taxes that exceed his Maryland state-income-tax obligation cannot apply the excess to offset the county income tax. If a Maryland resident has a state-income-tax rate of 5% and a county-

income-tax rate of 2%, and earns all of his income in another State with an income-tax rate of 6%, he does not owe any state income tax to Maryland, but he still owes the 2% county income tax.

2. Respondents are a married couple. Pet. App. 8-9. In 2006, they resided in Howard County, Maryland, which had a county-income-tax rate of 3.2%. *Ibid.*; Br. in Opp. 5. Respondents owned stock in a corporation, Maxim Healthcare Services, Inc. (Maxim), that had elected to be treated as an "S corporation" under the Internal Revenue Code. Pet. App. 9. An S corporation does not pay federal income tax, but instead passes through its income to its shareholders, who then pay personal income tax on that income. See 26 U.S.C. 1366. S corporations are treated similarly under Maryland's tax code. Pet. App. 8.

In 2006, respondents earned taxable net income of $2,667,133, much of which was passed through from Maxim. Pet. App. 56. Because Maxim had earned a substantial portion of its income in States other than Maryland, it filed income-tax returns on behalf of its shareholders in 39 States. *Id.* at 9, 56. Maxim allocated to each shareholder a pro rata portion not only of its income, but also of the state taxes that it had paid. *Ibid.*

On their 2006 Maryland income-tax return, respondents claimed a tax credit of $84,550 for income taxes paid in other States. Pet. App. 56. Petitioner disallowed the claimed tax credit in part. *Ibid.* Petitioner "allowed taxes paid to other states to offset only those taxes owed to Maryland representing 'state income tax,' and not 'county income tax.'" *Ibid.*

3. Respondents appealed the resulting tax deficiency. Pet. App. 10. The Hearings and Appeals Sec-

tion of the Comptroller's Office modified the assessment slightly but otherwise affirmed. *Ibid.*

Respondents then appealed to the Maryland Tax Court, which also affirmed. Pet. App. 10, 130-141. In the tax court, respondents argued that the "limitation of the credit" to apply only to the state income tax and not to the county income tax "discriminated against interstate commerce in violation of the Commerce Clause of the United States Constitution." *Id.* at 10. This Court has interpreted the Commerce Clause—which empowers Congress to "regulate Commerce * * * among the several States," U.S. Const. Art. I, § 8, Cl. 3—to "have a 'negative' aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce." *Oregon Waste Sys., Inc.* v. *Department of Envtl. Quality*, 511 U.S. 93, 98 (1994). The tax court rejected respondents' Commerce Clause argument. Pet. App. 135-136.

The Circuit Court for Howard County reversed. Pet. App. 53-129. The circuit court agreed with respondents' Commerce Clause argument and concluded that, in the absence of a credit against the county income tax for "income earned and taxed out-of-state," Maryland's scheme "substantially burdens its residents conducting business in interstate commerce, as compared to those conducting purely intrastate commerce." *Id.* at 54. The court reasoned, *inter alia*, that if a Maryland resident earns income in a State with an income-tax rate higher than Maryland's state-income-tax rate, the resident's total tax liability (to all States) will be greater than if he had earned all of his income in Maryland (because he will pay the higher

out-of-state income tax plus the entire Maryland county income tax). *Id.* at 63-116.

4. The Court of Appeals of Maryland granted review and affirmed the circuit court's decision. Pet. App. 1-49. The court recognized that, under decisions of this Court addressing Due Process Clause challenges to various state taxes, a State "may tax the income of its residents, regardless of where that income is earned." *Id.* at 3-4 (citing *Chickasaw Nation*, 515 U.S. at 462-463 & n.11; *New York* v. *Graves*, 300 U.S. 308, 312-313 (1937)). The court held, however, that Maryland's imposition of a county income tax without a credit for out-of-state income taxes violates the Commerce Clause. *Id.* at 32.

The court of appeals explained that a Maryland resident will sometimes face greater total multistate tax liability if he earns out-of-state income than if he had earned the same total amount of income within the State. Pet. App. 16. The court concluded that "[t]his creates a disincentive for the taxpayer—or the S corporation of which the taxpayer is an owner—to conduct income-generating activities in other states with income taxes." *Ibid.* The court also believed that the Maryland tax scheme did not satisfy the four-part test set forth in *Complete Auto Transit, Inc.* v. *Brady*, 430 U.S. 274 (1977), which requires, *inter alia*, that a state tax subject to the test be "fairly apportioned" and "not discriminate against interstate commerce." *Id.* at 279; see Pet. App. 17-32.

Two judges dissented. Pet. App. 36-49. The dissenting judges observed that respondents "live in Howard County where they benefit from the services provided by that county," and that it "'is not a purpose of the Commerce Clause to protect state residents

from their own state taxes.'" *Id.* at 37 (quoting *Goldberg* v. *Sweet*, 488 U.S. 252, 266 (1989)). The dissenting judges also recognized that States can, in some circumstances, permissibly "impose taxes that may result in some overlap in taxation of income." *Id.* at 40 (citing *Moorman Mfg. Co.* v. *Bair*, 437 U.S. 267, 278-279 (1978)). They emphasized that Maryland's tax system "does not expressly discriminate against interstate commerce" because the county income tax "is directed at income earned by residents of Howard County, not interstate commerce." *Id.* at 41. They also concluded that respondents had failed to prove that Maryland's system "places more than an incidental burden upon interstate commerce." *Ibid.*; see *id.* at 44-48.

5. The court of appeals denied reconsideration. Pet. App. 52. The court issued a short opinion suggesting, *inter alia*, that Maryland might avoid Commerce Clause concerns not only through tax credits but also through other methods. *Id.* at 50-52.

SUMMARY OF ARGUMENT

The Court of Appeals of Maryland erred in concluding that Maryland must grant a credit against its residential county income tax for income taxes paid to other States. The Constitution has always permitted States to impose taxes, including taxes proportional to income, on individuals who enjoy the privileges of residency. Although States often choose to grant credits to residents for income taxes paid in other States, the Commerce Clause does not compel a State to offer such credits or otherwise to defer to other States in the taxation of its own residents' income.

A. This Court has long recognized that States have the power to tax the entire income, wherever

earned, of their own residents. Whether a resident earns income in-state, out-of-state, or both, he benefits significantly from the rights, protections, and privileges that his State of residence provides. A State that elects to distribute the shared costs of government among its residents in proportion to their incomes may choose to reduce the contribution required of a particular resident based on that resident's payment of income taxes to other States. Such a choice, however, "is an independent policy decision and not one compelled by jurisdictional considerations." *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U.S. 450, 463 n.12 (1995) (citation omitted).

A State's taxation of its own residents' income is structurally limited by the political will of those residents, not by the unilateral taxation policies of other States. Decisions of this Court explicating that principle have primarily addressed challenges to state taxes under the Due Process Clause. The Court has repeatedly recognized, however, that a State's power to tax its own residents' income is an attribute of state sovereignty. If the Commerce Clause required States to forgo residential income-tax revenue whenever a resident pays out-of-state income taxes, a longstanding and significant principle of this Court's state-taxation jurisprudence would be a virtual dead letter.

B. This Court has applied the Commerce Clause to invalidate "protectionist" laws that favor in-state over out-of-state economic interests. Maryland's county income tax, which is similar to certain founding-era taxes, is not such a law. Consistent with the Commerce Clause, States may choose to provide local services, such as public education, exclusively to state residents. A logical corollary to that rule is that

States may fund such services by collecting taxes from their residents, including taxes on income earned outside the State. And because taxes paid to other States do not defray the cost of benefits that the State of residence provides, the State of residence need not reduce its own income-tax assessments to reflect those payments.

Relying on this Court's decision in *Complete Auto Transit, Inc.* v. *Brady*, 430 U.S. 274 (1977), the court below concluded that Maryland's county income tax is unconstitutional because it is unfairly apportioned and discriminates against interstate commerce. But to the extent that the factors described in *Complete Auto* are applicable here, they confirm, rather than refute, the constitutionality of the county income tax. First, an income tax is fairly apportioned so long as a State does not apply it to a portion of a taxpayer's income that is exclusively taxable only by another State. Maryland's county income tax satisfies that requirement because *no* portion of a Maryland resident's income is categorically beyond Maryland's reach. Second, the county income tax—which taxes in-state and out-of-state income at an identical rate—does not discriminate against interstate commerce. A Maryland resident's total (multistate) tax bill for out-of-state income will be higher than for in-state income only if *another* State has chosen to tax the income at a rate higher than Maryland's own state income tax. Higher total taxes for a resident who earns income out-of-state are commonplace, even in States with *no* income tax, and any increased tax burden resulting from the combination of two different States' laws is not discrimination attributable to Maryland.

The tax at issue here cannot properly be deemed invalid by analogy to certain types of taxes on property or on corporate income. The relationship between a State and its individual residents is different in kind from its relationship to a multistate corporation, even if the corporation is "domiciled" in that State. And respondents identify no sound reason to believe that rejection of their novel Commerce Clause theory will have any significant detrimental effect on interstate commercial activity.

ARGUMENT

MARYLAND'S COUNTY INCOME TAX IS CONSTITUTIONAL

A. The Taxation Policies Of Other States Do Not Limit A State's Sovereign Authority To Tax Its Own Residents' Income

1. It is a "well-established principle of interstate and international taxation" that "a jurisdiction * * * may tax *all* the income of its residents, even income earned outside the taxing jurisdiction." *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U.S. 450, 462-463 (1995). "Domicil itself affords a basis for such taxation" because "[e]njoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from responsibility for sharing the costs of government." *Id.* at 463 (quoting *New York* v. *Graves*, 300 U.S. 308, 313 (1937)). "These are rights and privileges which attach to domicil within the state," and "[n]either the privilege nor the burden is affected by the character of the source from which the income is derived." *Ibid.* (quoting *Graves*, 300 U.S. at 313).

As the Court observed nearly two centuries ago, the "people of a State * * * give to their govern-

ment a right of taxing themselves and their property, and as the exigencies of government cannot be limited, they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislator, and on the influence of the constituents over their representative, to guard them against its abuse." *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 428 (1819).[1] In accordance with that principle, this Court has frequently rejected claims that taxes on a resident's out-of-state income violate the Due Process Clause for lack of a sufficient "connection" or "relat[ionship]," *Quill Corp.* v. *North Dakota*, 504 U.S. 298, 306, 313 (1992) (citations omitted), to the taxing State. The Court has held, for example, that a State "may tax its residents upon net income from a business whose physical assets, located wholly without the state, are beyond its taxing power," *Graves*, 300 U.S. at 313 (citing, *inter alia*, *Lawrence* v. *State Tax Comm'n*, 286 U.S. 276 (1932)); "may tax net income from bonds held in trust and administered in another state," *ibid.* (citing *Maguire* v. *Trefry*, 253 U.S. 12, 14 (1920)); and may tax the income from rental properties located in other States, *id.* at 312-316.

2. A State does not lose authority to tax its own residents' income simply because the State in which the income was earned also taxes that income. "Although sovereigns * * * sometimes elect not to" exercise their "authority to tax all income of their

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[1] *McCulloch*'s reference to "property" is best understood as a reference to property located in the State. A State cannot necessarily tax property located out-of-state simply because its owner is a state resident. See, *e.g.*, *Safe Deposit & Trust Co.* v. *Virginia*, 280 U.S. 83, 93 (1929) ("Tangible personal property permanently located beyond the owner's domicile may not be taxed at the latter place.").

residents," and thus "commonly credit income taxes paid to other sovereigns," that "is an independent policy decision and not one compelled by jurisdictional considerations." *Chickasaw Nation*, 515 U.S. at 463 n.12 (internal quotation marks and citation omitted). A constitutional rule requiring an automatic tax credit whenever a resident's income is subject to tax in another State would impose anomalous constraints on state sovereignty. Suppose that many residents of State A, which has an income-tax rate of 4%, work (and earn all of their income) in State B. If State B has no income tax, then State A can collect the full 4% from those residents. But if the legislature of State B imposes a 2% income tax, then State A's tax collections from those residents will be halved. And if State B imposes a 4% income tax, then State A cannot collect *any* income tax from those residents unless it increases its income-tax rate.

It would make little sense for a State's power to collect an income tax from its own residents, in order to fund the services and protection those residents receive, to be circumscribed by the independent actions of another State with a less significant connection to those persons. Cf. *McCulloch*, 17 U.S. (4 Wheat) at 431 ("Would the people of any one State trust those of another with a power to control the most insignificant operations of their State government? We know they would not."). An individual may receive such important benefits as schools, emergency services, health and welfare benefits, utilities, and various legal protections from his State of residence, and it is the only State whose officials are politically accountable to him. If State A's authority to tax its residents' income were contingent on State B's

taxing decisions, then State B's officials could limit the range of options available to State A in matters of fiscal policy. In particular, any increase in State B's income-tax rate would force State A's legislators either to forgo revenue (and likely cut programs that benefit its residents) or to generate revenue in other ways (likely by increasing taxes that affect its residents). Nothing in the Constitution, and no decision of this Court, compels that result. See, *e.g.*, *Mobil Oil Corp.* v. *Commissioner*, 445 U.S. 425, 444 (1980) ("[T]he constitutionality of a Vermont tax should not depend on the vagaries of New York tax policy.").

3. As respondents have emphasized (Br. in Opp. 13-17), this Court's decisions recognizing States' broad authority to tax their own residents have typically addressed challenges to state taxes brought under the Due Process Clause. In articulating the applicable constitutional rule, however, the Court has not simply stated that particular constitutional provisions, such as the Due Process Clause, do not limit a State's power to tax its residents' income. Rather, it has described the power to tax all such income as an affirmative aspect of state sovereignty. See, *e.g.*, *Lawrence*, 286 U.S. at 281 ("We can find no basis for holding that taxation of the income at the domicile of the recipient * * * is in any respect so arbitrary or unreasonable as to place it outside the constitutional power of taxation reserved to the state."); *Shaffer* v. *Carter*, 252 U.S. 37, 57 (1920) ("As to residents [a State] may, and does, exert its taxing power over their income from all sources, whether within or without the State."). In *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, *supra*, the Court summarized its prior decisions by asserting without qualification that a State

"may tax *all* the income of its residents," and that offering a credit for taxes paid to other sovereigns is a "policy decision" that is "not * * * compelled by jurisdictional considerations." 515 U.S. at 462-463 & n.12 (internal quotation marks and citation omitted).

The constitutional rule urged by respondents and adopted by the court below, which would compel such a credit, not only is contrary to the Court's traditional understanding of state authority in this area, but also would effectively overrule specific precedents that reflect that understanding. In *Fidelity & Columbia Trust Co.* v. *City of Louisville*, 245 U.S. 54 (1917), for example, this Court held that a city in Kentucky could tax bank deposits belonging to one of its residents, notwithstanding that the deposits represented the proceeds of a Missouri business and were held in a Missouri bank. *Id.* at 57-60. Although the Court accepted that "the Missouri deposits could have been taxed in that State," it recognized Kentucky's overlapping authority to impose "a tax upon the person * * * for the general advantages of living within the jurisdiction * * * measured more or less by reference to the riches of the person taxed." *Id.* at 58. On respondents' theory, however, Kentucky's taxing authority would have been contingent on the existence and size of any Missouri tax.

The rule urged by respondents and adopted below would also effectively nullify *Lawrence* v. *State Tax Commission*, *supra*, in which the Court concluded that the Due Process Clause permitted Mississippi to tax the net income that a Mississippi resident had earned on the construction of public highways in Tennessee. 286 U.S. at 279-281. This Court has understood *Lawrence*, and other decisions, to hold that "income may

be taxed both by the state where it is earned and by the state of the recipient's domicile." *Curry* v. *McCanless*, 307 U.S. 357, 368 (1939); see *id.* at 363 n.1, 368 n.4 (also citing, *inter alia*, *Graves*, 300 U.S. at 308, and *Guaranty Trust Co.* v. *Virginia*, 305 U.S. 19 (1938)); see also Reply Br. at 32, *Lawrence*, *supra* (No. 31-580) (representing that both Mississippi and Tennessee were effectively imposing "an income tax upon the same occupation"). Respondents have hypothesized (Supp. Br. 9) that, in at least some of the cases in which that principle has been applied, the tax laws of the State of residence might have "allowed a credit" for taxes paid out-of-state. But whether or not that is so, the Court's decisions did not rely on the existence of such a credit. To the contrary, the Court has made clear that a State's sovereign power to tax all the income of its residents, wherever earned, does not depend on its willingness to provide such a credit. See *Chickasaw Nation*, 515 U.S. at 462-463 & n.12; see also, *e.g.*, *Guaranty Trust Co.*, 305 U.S. at 22 (describing the authority of two States to tax the "same income").

B. With Respect To Taxation Of An Individual's Income, The Commerce Clause Does Not Give The State Where The Income Is Earned Priority Over The Taxpayer's State Of Residence

The Commerce Clause "does not expressly impose any constraints on 'the several States,' and several Members of the Court have expressed the view that it does not do so." *McBurney* v. *Young*, 133 S. Ct. 1709, 1719 (2013). The Court has "[n]onetheless * * * long inferred that the Commerce Clause itself imposes certain implicit limitations on state power." *Ibid.* The States that ratified the Commerce Clause, however,

would not have understood it to subordinate their "ordinary prerogative to tax the income of every resident," *Chickasaw Nation*, 515 U.S. at 464, to a right of first refusal by the State in which the income is earned.

States may constitutionally choose to provide important government services only to their own residents. States may accordingly insist that residents pay their fair share of the costs of those services, and they may determine each resident's fair share by reference to that resident's total income, regardless of where that income is earned. And because States are politically accountable to their own residents, the constitutional limitation that respondents advocate is unnecessary to prevent state overreaching in the sphere of individual income taxation.

1. *Allocating the costs of local government services to residents in proportion to their total pre-tax income does not offend the Commerce Clause*

Both before and after the ratification of the Commerce Clause, some States imposed taxes keyed to income that did not appear to provide explicit credits for similar taxes paid elsewhere.[2] A tax of that sort is

[2] See, *e.g.*, 1777-78 Mass. Acts ch. 13, § 2, at 756 (imposing a tax upon "the amount of [residents'] income from any profession, faculty, handicraft, trade or employment; and also on the amount of all incomes and profits gained by trading by sea and on shore"); 1781 Pa. Laws ch. 961, § 12, at 390 ("[A]ll offices and posts of profit, trades, occupations and professions (that of ministers of the gospel of all denominations and schoolmasters only excepted), shall be rated at the discretion of the township, ward or district assessors * * * having due regard to the profits arising from them."); Delos O. Kinsman, *The Income Tax in the Commonwealths of the United States* 12-13, 17 (1903) (explaining that the Massachusetts

consistent with both original and current understandings of the Commerce Clause.

In an effort to "effectuate the Framers' purpose," the "modern law of what has come to be called the dormant Commerce Clause is driven by concern about economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *Department of Revenue* v. *Davis*, 553 U.S. 328, 337-338 (2008) (internal quotation marks, brackets, and citations omitted). Accordingly, the "crucial inquiry" in evaluating a Commerce Clause challenge to a state law "must be directed to determining whether [the law] is basically a protectionist measure, or whether it can fairly be viewed as a law directed to legitimate local concerns, with effects upon interstate commerce that are only incidental." *City of Phila.* v. *New Jersey*, 437 U.S. 617, 624 (1978); see *McBurney*, 133 S. Ct. at 1719-1720.

A tax like Maryland's—which allocates the cost of local government services to individual state residents in proportion to each resident's total income, irrespective of whether the resident also pays out-of-state income tax—falls into the latter category. Since the founding era, income taxes have been "a recognized method of distributing the burdens of government, favored because [they] requir[e] contributions from those who realize current pecuniary benefits under the protection of the government, and because the tax

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and Pennsylvania taxes continued, in some form, through the beginning of the nineteenth century); see also *Shaffer*, 252 U.S. at 51 (noting that "[t]axes of [the] character" of income taxes "were imposed by several of the States at or shortly after the adoption of the Federal Constitution").

may be readily proportioned to their ability to pay." *Shaffer*, 252 U.S. at 51. The purpose of Maryland's scheme is not to interfere with residents' ability to do business in other States, but instead to ensure that each resident, "regardless of * * * another state's method or rate of taxation," pays his fair share for the local services that all residents receive. Pet. App. 6.

The nonprotectionist character of a State's efforts to collect such a generalized-services fee, even from residents who pay income taxes out-of-state, follows logically from this Court's precedents. The Court has viewed as constitutional a variety of "rules restricting to state residents the enjoyment of state educational institutions, energy generated by a state-run plant, police and fire protection, and agricultural improvement and business development programs." *Reeves, Inc.* v. *Stake*, 447 U.S. 429, 442 (1980). "Such policies, while perhaps 'protectionist' in a loose sense, reflect the essential and patently unobjectionable purpose of state government—to serve the citizens of the State." *Ibid.* A State thus does not offend the Commerce Clause by "limit[ing] benefits generated by [such] a state program to those who fund the state treasury and whom the State was created to serve." *Ibid.*; see *McBurney*, 133 S. Ct. at 1720 (same). The principle that States may favor residents in the provision of certain local services—on the ground that residents "fund the state treasury"—cannot be squared with a constitutional rule that would entitle a resident to pay less for those services simply because he also makes payments to the treasuries of *other* States.

Respondents acknowledge that States may collect from their residents a generalized-services fee that is indexed to the value of their residential property,

without any requirement to reduce a resident's payment obligation based on taxes paid to other States. See Br. in Opp. 23 (stating that "property taxes * * * are not subject to credit"). Such a fee does not lose its nonprotectionist character simply because the State elects to index the fee to a resident's income, rather than to the value of his residence. See, *e.g.*, *Graves*, 300 U.S. at 313 ("A tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits."). Although property taxes may be a more common source of local revenue than income taxes, see Supp. Br. 12, the Commerce Clause does not preclude a State from funding local government through an income tax with a fixed minimum rate for residents. See, *e.g.*, *Miller Bros.* v. *Maryland*, 347 U.S. 340, 345 (1954) ("[T]he fact of residence creates universally recognized reciprocal duties of protection by the state and of allegiance and support by the citizen. The latter obviously includes a duty to pay taxes, and their nature and measure is largely a political matter.").

State residents cannot reasonably expect to enjoy local governmental services without paying for them. See, *e.g.*, Howard County, Maryland, *Fiscal Year 2014 Approved Operating Budget Detail* 5 (Howard County budgeted more than $903 million for education in fiscal year 2014), available at http://www.howardcountymd.gov/departments.aspx?ID=499. "It is not a purpose of the Commerce Clause to protect state residents from their own state taxes." *Goldberg* v. *Sweet*, 488 U.S. 252, 266 (1989). The Court has accordingly distinguished for Commerce Clause purposes between taxes that burden nonresidents, "who would have difficulty

effecting legislative change," and taxes that are paid by residents, "who presumably [are] able to complain about and change the tax through the [state] political process." *Id.* at 266. The residents of a State may democratically decide—as States since the founding era have decided—that the fairest way to distribute all or some of their joint financial burden is through a tax proportioned to income. The decision to adopt such a scheme should not entitle residents paying out-of-state income taxes to pay less than their democratically-allocated fair share of the cost of local services.

2. *Maryland's county income tax is not unfairly apportioned and does not discriminate against interstate commerce*

At respondents' urging, the court below analyzed Maryland's tax scheme under the four-part test set forth in *Complete Auto Transit, Inc.* v. *Brady*, 430 U.S. 274 (1977). See Pet. App. 17-32; Resp. C.A. Br. 20-36. Under that test, this Court "will sustain a tax against Commerce Clause challenge so long as 'the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State.'" *Trinova Corp.* v. *Michigan Dep't of Treasury*, 498 U.S. 358, 372 (1991) (quoting *Complete Auto*, 430 U.S. at 279). Maryland's county income tax qualifies for that constitutional safe harbor.[3] Respondents have not

[3] The *Complete Auto* test was not designed to evaluate the constitutionality of a State's taxation of its own residents' income. See, *e.g.*, Pet. App. 41 n.2 (Greene, J., dissenting) (observing that, "[i]n most of the cases where the Supreme Court has subjected a tax to the *Complete Auto* test, the tax was directly on interstate commerce itself or items in interstate commerce"). A nonprotectionist tax of

disputed that "application of the county tax in this case has a substantial nexus to Maryland or that it is fairly related to services provided by the State." Pet. App. 17-18; see, *e.g.*, *Graves*, 300 U.S. at 313 (recognizing the "direct relationship" between "the economic advantage realized by the receipt of income and represented by the power to control it" and "the equitable distribution of the tax burden"). And, contrary to the view of the state court of appeals (Pet. App. 17-32), the county income tax also "is fairly apportioned" and "does not discriminate against interstate commerce." *Complete Auto*, 430 U.S. at 279.

Fair apportionment. The "central purpose behind the apportionment requirement is to ensure that each State taxes only its fair share of an interstate transaction." *Goldberg*, 488 U.S. at 260-261. Maryland's county income tax is fairly apportioned because Maryland's taxable "fair share" of its residents' income is the entirety of that income, wherever earned. See *Chickasaw Nation*, 515 U.S. at 462-463. A State's right to tax its resident's whole income "is founded upon the protection afforded by the state to the recipient of the income in his person, in his right to receive the income and in his enjoyment of it when received." *Graves*, 300 U.S. at 313.

The state court of appeals concluded that Maryland's county income tax lacks "external consistency" because, in the absence of a credit, it "'reaches beyond that portion of value that is fairly attributable to economic activity within the taxing [S]tate.'" Pet. App. 26 (quoting *Oklahoma Tax Comm'n* v. *Jefferson Lines, Inc.*, 514 U.S. 175, 185 (1995)). That conclusion

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the sort at issue here would accordingly be constitutional even if it did not qualify for the *Complete Auto* safe harbor.

is inconsistent with a State's sovereign authority to tax all of its residents' income, and it departs significantly from this Court's income-tax-apportionment jurisprudence.

In the context of income taxation, this Court has implemented the Commerce Clause's general "prohibition against multiple taxation," *Jefferson Lines*, 514 U.S. at 182, by focusing on "specific formulas for slicing a taxable pie among several States in which the taxpayer's activities contributed to taxable value," *id.* at 186. The Court has held, for example, that California cannot apply a tax (of 5.5%) to all of an out-of-state corporation's income, but instead may tax only the fraction of the corporation's income that represents a rough approximation of the "value * * * generated" in California. *Container Corp.* v. *Franchise Tax Bd.*, 463 U.S. 159, 164, 175 n.12, 183 (1983). The size of that "slic[e]" of the "taxable pie" does not depend on whether other States actually impose taxes on the remainder of the taxpayer's income. *Jefferson Lines*, 514 U.S. at 186.

The apportionment argument advanced by respondents, and adopted by the court below, does not fit that framework. Respondents have not contended that, whenever a Maryland resident earns income in other States, Maryland may tax only a fixed portion of that income. Such a rule would mean that some percentage of a Maryland resident's out-of-state income is beyond Maryland's power to tax *even if* the State in which the income is earned does not impose any tax upon it. Respondents instead appear to accept that every dollar earned by a Maryland resident, including dollars earned through out-of-state activity, may be taxed in full by Maryland *unless* the State in which

the income is earned imposes its own tax upon that income. In respondents' view, the county tax is constitutionally infirm only because it does not include a credit for out-of-state taxes actually imposed and paid on Maryland residents' out-of-state income. See, *e.g.*, Supp. Br. 11; see also, *e.g.*, Pet. App. 30, 34. That view, under which Maryland's taxing authority would be contingent on taxing decisions of other States, cannot be reconciled with this Court's Commerce Clause precedents. See, *e.g.*, *Armco Inc.* v. *Hardesty*, 467 U.S. 638, 644-645 (1984) (rejecting approach under which "the constitutionality of West Virginia's tax laws would depend on the shifting complexities of the tax codes of 49 other States").[4]

The court below was also mistaken in concluding (Pet. App. 19-25) that Maryland's county income tax is invalid because it fails this Court's "internal consistency" test. That test examines "the structure of the tax at issue to see whether its identical application by every State in the Union would place interstate

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[4] In circumstances in which a State might *otherwise* be taxing more than its fair share of an interstate transaction, the presence of a tax credit may (at least in some non-income-tax contexts) alleviate apportionment concerns, because it cedes primary taxing authority to the jurisdiction with the stronger claim. See, *e.g.*, *Goldberg*, 488 U.S. at 264 (tax on phone calls); *D.H. Holmes Co.* v. *McNamara*, 486 U.S. 24, 31 (1988) (tax on catalogs). But in the context of a residential income tax like Maryland's, it makes little sense to view the question whether Maryland is taxing an unduly large "portion of value," *Jefferson Lines*, 514 U.S. at 185, as turning on the presence or absence of a tax credit. Even with a tax credit, the county income tax would still be computed by reference to a resident's entire income. Although a tax credit would allow the resident to subtract his out-of-state income-tax bills from the amount that Maryland would otherwise *collect*, the credit would not reduce the *portion* of income subject to the county tax.

commerce at a disadvantage as compared with commerce intrastate." *Jefferson Lines*, 514 U.S. at 185. The Court has found the test a useful proxy for the "threat of malapportionment" because "allowing [a tax that fails the test] in one State would place interstate commerce at the mercy of those remaining States that might impose an identical tax." *Ibid.* But the Court has not invariably required that a tax satisfy the test in order to survive a Commerce Clause challenge, see *American Trucking Ass'ns, Inc.* v. *Michigan Pub. Serv. Comm'n*, 545 U.S. 429, 438 (2005), and the test is ill-suited to evaluating a State's tax on its own residents' income.

In describing the purpose of the "internal consistency" test, the Court has explained that "[a] failure of internal consistency shows as a matter of law that a State is attempting to take more than its fair share of taxes from the interstate transaction." *Jefferson Lines*, 514 U.S. at 185. The county tax at issue here, however, is not imposed on "interstate transaction[s]" as such, but on Maryland residents *qua* residents. See *Graves*, 300 U.S. at 313 ("Domicil itself affords a basis for such taxation."). Nothing in this Court's decisions suggests that the "internal consistency" test was intended to supersede the established understanding that a State may tax its residents' entire income wherever earned. Respondents, moreover, do not offer any plausible alternative constitutional formula for determining Maryland's "fair share of taxes" on income earned by its residents outside the State. Rather, their argument is that, if the State in which the income is earned taxes that income at a rate equal to or greater than the applicable Maryland tax

rate, Maryland is constitutionally precluded from collecting any tax at all on that income.

If every State taxed all the income of its own residents, and only of its own residents, there would be no plausible argument that interstate commerce was disadvantaged. Adoption by every State of a county income tax equivalent to Maryland's therefore would not, in and of itself, violate the "internal consistency" test. That would remain true even if every State also imposed a separate tax on the earning of income in-state, applicable to residents and nonresidents alike, as Maryland does. In that scenario, everyone would pay the county income tax once (to his State of residence) and the tax on earning income once (to the State in which it was earned, whether or not the State of residence), irrespective of where his income-earning activities occur.

The court below found Maryland's overall tax scheme internally inconsistent only because Maryland, in addition to the taxes just described, imposes an additional special nonresident tax (as an alternative to the county income tax) on income earned in Maryland by *non*residents. Md. Tax Code § 10-106.1; see Pet. App. 5, 20-22 (internal-consistency analysis finding that out-of-state income results in additional tax burden equal to special nonresident tax in State where income was earned). Respondents are not subject to that tax, have not challenged it, and suffer no injury from it. There is no logical reason that Maryland's "fair share of taxes," *Jefferson Lines*, 514 U.S. at 185, on its own residents' income should depend on whether, and to what extent, Maryland also taxes income earned by nonresidents within the State.

Discrimination against interstate commerce. Maryland's county income tax does not "discriminate[] against interstate commerce either on its face or in practical effect," but instead "regulates evenhandedly with only 'incidental' effects on interstate commerce." *Hughes* v. *Oklahoma*, 441 U.S. 322, 336 (1979). Respondents do not contend that it is discriminatory for a State to impose a special tax only on residents. See, *e.g.*, *United Haulers Ass'n, Inc.* v. *Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007) (explaining that "discrimination" under the Commerce Clause includes only discrimination that disfavors "out-of-state economic interests") (citation omitted). And Maryland's county income tax applies to all residents of the State. Although the precise rate varies depending on the taxpayer's county of residence, the rate for any particular county is the same regardless of whether income is earned in-state or out-of-state. See, *e.g.*, *id.* at 345 (no discrimination where statute did not distinguish between in-state and out-of-state interests); *Northwest Cent. Pipeline Corp.* v. *State Corp. Comm'n*, 489 U.S. 493, 523 (1989) (similar); *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 471-472 (1981) (similar).[5]

[5] Unlike certain taxes that this Court has previously found to be discriminatory, the amount of the county income tax is in no way tied to the amount of interstate commerce in which the taxpayer engages. See, *e.g.*, *Fulton Corp.* v. *Faulkner*, 516 U.S. 325, 333 (1996) (invalidating "facially discriminat[ory]" scheme that "taxe[d] stock only to the degree that its issuing corporation participates in interstate commerce"); *Camps Newfound/Owatonna, Inc.* v. *Town of Harrison*, 520 U.S. 564, 572 (1997) (invalidating "discriminatory tax exemption" whose application depended "on the residence of the consumers that [the taxpayer] serve[d]").

The state court of appeals believed that Maryland's income-tax system discriminates against interstate commerce because Maryland residents may sometimes pay higher total (in-state plus out-of-state) taxes on out-of-state income than on in-state income. See Pet. App. 30. But if it were considered discriminatory to adopt a tax scheme under which residents would sometimes pay lower taxes on income earned in-state, then any number of state taxation systems would be constitutionally infirm. Residents of a State with no income tax, but with a residential-property tax or a flat-fee residence tax, will have higher total tax bills if they earn income in another State that has an income tax than if they earn the same income locally. The Commerce Clause, however, does not require *every* resident-specific state tax to give way to the nonresident income taxes imposed by other States. See, *e.g.*, *Commonwealth Edison Co.* v. *Montana*, 453 U.S. 609, 623-624 (1981) ("[I]t was not the purpose of the commerce clause to relieve those engaged in interstate commerce from their just share of state tax burden even though it increases the cost of doing business.") (citation omitted).

Contrary to the court of appeals' suggestion (Pet. App. 30), a residential income tax does not in itself incentivize the earning of income in-state. Notwithstanding the existence of such a tax, a resident would be indifferent between earning income in-state and earning income in another State that has no income tax of its own. And under Maryland's particular income-tax scheme, a resident would have no inherent reason to prefer earning income in Maryland over earning income in a State with an income-tax rate less than Maryland's own state-income-tax rate. See p. 2,

supra (numerical example). The absence of any unique advantage to earning income in the State of residence underscores that a residential income tax does not unconstitutionally favor in-state interests. See *Amerada Hess Corp.* v. *Director*, 490 U.S. 66, 78 n.10 (1989) (finding a state tax constitutional where, *inter alia*, it did not inherently incentivize taxpayer to move its activities to the taxing State).

Respondents contend that "Maryland's scheme is discriminatory" because respondents "are double-taxed on a portion of their income and similarly situated Marylanders who earn income entirely in-state are not." Supp. Br. 11 (emphasis omitted). The precise import of that statement is unclear. Respondents do not argue that a constitutional violation occurs whenever a Maryland resident's out-of-state income is taxed at a rate higher than the rate that would apply to income earned in Maryland. To the contrary, respondents recognize that, regardless of whether Maryland offers tax credits, Maryland residents *always* "will pay higher taxes" on income earned in any State that "applies a higher tax rate than Maryland does," and "there is nothing wrong with that." *Ibid.* Respondents also do not appear to contend that the Commerce Clause is violated whenever two States tax the same income, since that could often occur even if the State of residence offered a credit for out-of-state taxes. Respondents' theory appears to be that these two factors taken together produce a constitutional violation, even though neither in isolation would do so; but that theory is untethered to any reasonable understanding of the Commerce Clause.

Although respondents may pay more in total income taxes than do Maryland residents who earn

equivalent incomes wholly within the State, respondents are wrong to attribute that disparity to differential treatment *by Maryland*. Indeed, because Maryland credited out-of-state taxes in computing respondents' liability for state (though not county) income taxes, see Pet. App. 56, Maryland ultimately took a *smaller* share of the income that respondents earned outside the State than of the income they earned in Maryland. Rather, the disparity of which respondents complain results from the fact that, whereas income earned in Maryland by a Maryland resident could not be taxed by any other State, respondents chose to engage in conduct that subjected them to other States' taxing powers as well. In *Moorman Manufacturing Co.* v. *Bair*, 437 U.S. 267 (1978), this Court found no "discriminat[ion] against interstate commerce" where alleged taxation disparities were "the consequence of the combined effect" of two state income-tax schemes, each of which was otherwise constitutional. *Id.* at 277 n.12. The Court reasoned that "the 'discrimination' d[id] not inhere in either State's" statute, and that the State whose law had been challenged was "not responsible" for the other State's scheme. *Ibid.*

Respondents suggest that this case is different because "Maryland made a deliberate choice to deny its citizens a credit on out-of-state income." Supp Br. 11 (emphasis omitted). It is equally true, however, that the other States in which respondents' income was taxed deliberately chose not to offer respondents a credit for their Maryland county income taxes. If the combined effect of the two States' taxing schemes were found to give rise to a Commerce Clause violation, the Court would need to decide which State is required to give way—or, to put the matter different-

ly, would need to decide whether the residence of the taxpayer or the location where income is earned is a constitutionally preferred basis for state taxation of particular income. Nothing in this Court's decisions compels such a choice, let alone dictates that a taxpayer's State of residence (on which the taxpayer primarily depends for basic governmental services, and in which the taxpayer possesses rights of political participation) must defer to another State's tax policies.

3. *Respondents' additional objections to Maryland's tax scheme lack merit*

Contrary to respondents' contention (*e.g.*, Supp. Br. 7-8), this Court's decisions addressing (and sometimes invalidating) state property-tax schemes are not controlling here. See *ibid.* (citing *Japan Line, Ltd.* v. *County of L.A.*, 441 U.S. 434 (1979) (invalidating state tax on value of cargo containers owned by foreign company and already fully taxed by Japan); *Standard Oil Co.* v. *Peck*, 342 U.S. 382, 384-385 (1952) (invalidating state tax on full value of out-of-state property of domestic corporation)). Income taxation operates on principles different from those that govern property taxation. See, *e.g.*, *Container Corp.*, 463 U.S. at 188; see also *id.* at 188-189 & n.24 (noting that the result in *Japan Line* relied heavily on the fact that foreign, rather than purely interstate, commerce was involved). Decisions involving sales taxes, gross-receipt taxes (which are akin to sales taxes, see, *e.g.*, *Jefferson Lines*, 514 U.S. at 179 n.3), and other non-income taxes likewise have no direct bearing on the question presented in this case.

Respondents are also wrong to focus (Supp. Br. 8-9) on whether the Commerce Clause requires States

to offer credits for out-of-state income taxes paid by corporations. Because this case involves a personal income tax on individual state residents, the Court need not and should not address the constitutionality of any hypothetical corporate income tax.[6] The constitutional limitations on state taxation of an in-state corporation's income need not be precisely identical to the constitutional limitations on state taxation of individual residents' personal income. For reasons explained above (see pp. 16-19, *supra*), the relationship between an individual resident and the State in which he resides is unique and different in kind, in terms of both its benefits and its burdens, from the relationship between that resident and a State in which he merely earns income. Even a resident who earns all his income elsewhere will reap the benefits of local roads, local police and fire protection, local public schools, local health and welfare benefits, and the right to vote in the State where he resides.

The same is not true for corporations, which have a fundamentally economic relationship with each State in which they are present, including the State in which they are domiciled. Domestic corporations do not, for example, have children who attend public school or a right to vote to repeal taxes they disfavor. The benefits conferred on a corporation by its State of domicile —laws and services that aid in revenue generation— are not qualitatively different from the benefits conferred by other States in which the corporation does

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[6] Respondents assert (Supp. Br. 8) that this case does involve "corporate income" because it concerns pass-through income from an S corporation. But the purpose and effect of S-corporation designation is that the income is treated as personal income under both Maryland and federal law. See p. 3, *supra*.

business.[7] That qualitative similarity is reflected in the fact that States that tax net corporate income do not meaningfully distinguish between domestic and foreign multistate corporations for income-tax purposes, but instead in each case use apportionment formulas to determine the fraction of corporate income subject to taxation. 1 Jerome R. Hellerstein & Walter Hellerstein, *State Taxation* ¶ 8.02[3], at 8-27 (3d ed. 2014) (Hellerstein).

It is an open question whether States are constitutionally *required* to apportion the income of a domestic corporation in that fashion. Hellerstein, ¶ 8.02[3], at 8-27 (observing that this Court has not addressed that issue); see, *e.g.*, *Mobil Oil*, 445 U.S. at 445-446 (reserving question of how New York might tax certain dividend income of a domestic corporation). But the *feasibility* of comparing a domiciliary State's interest to a nondomiciliary State's interest, and apportioning the income between such States, significantly differentiates corporate income taxation from personal income taxation. Cf. *Miller Bros.*, 347 U.S. at 345 & nn. 8, 17 (categorizing seperately decisions of this Court allowing taxation of individuals' income on the basis of "residence" from decisions "in which incorporation by a state * * * forms the basis for proportionate taxation of a company, including its * * *

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[7] Respondents contend (Supp. Br. 8) that "a corporation *does* have a special relationship with its state of domicile" because "a corporation is 'at home' in its domiciliary state and is subject to the state's pervasive general jurisdiction." But whatever relevance the "at home" relationship may have to the Commerce Clause, the relationship is not unique, as a corporation may be "at home" in multiple States, including both its "place of incorporation" and its "principal place of business." *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 760 (2014). That is not true of individuals.

income"). The possibility that the Commerce Clause analyses might be different in the two contexts simply reflects the fact that individuals and corporations interact with States in different ways.

Finally, respondents suggest (Supp. Br. 12-13) that upholding Maryland's tax scheme will have a "tremendous" adverse practical impact. That suggestion lacks foundation. In Maryland, where residents have been subject for nearly 40 years to a county income tax without an out-of-state-tax credit, reversing the lower court would simply preserve the status quo. See Pet. App. 7; see also Pet. C.A. Reconsideration Mot. 9 (explaining that reciprocity agreements with most neighboring jurisdictions limit the amount of out-of-state income taxes that Maryland residents actually pay). The same is true of other jurisdictions that may have similar taxes. See Supp. Br. 5.

Decisions of this Court (and of other courts) have long recognized the broad authority of States to tax their own residents' income. See U.S. Cert. Br. 18-20. A ruling in petitioner's favor would simply confirm the established understanding that, although States often offer their residents credits for income taxes paid to other States, they have no constitutional obligation to do so. There is thus no sound reason to suppose that reversing the decision below would precipitate a repeal of such credits by States that currently provide them. Accordingly, and particularly because Congress would have the authority to address any problems that might arise, see, *e.g.*, *Moorman Mfg.*, 437 U.S. at 278-280, practical considerations do not favor adoption of respondents' novel Commerce Clause theory.

CONCLUSION

The judgment of the Court of Appeals of Maryland should be reversed.

Respectfully submitted.

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APPENDIX

1. U.S. Const., Art I, § 8, Cl. 3 provides in pertinent part:

The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

2. U.S. Const. Amend. XIV, § 1 provides in pertinent part:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law;

3. Md. Code Ann. Tax-Gen. § 10-102 (LexisNexis 2010) provides:

Imposition of tax—In general.

Except as provided in § 10-104 of this subtitle, a tax is imposed on the Maryland taxable income of each individual and of each corporation.

4. Md. Code Ann. Tax-Gen. § 10-103(a)(1) (LexisNexis 2010) provides:

County income tax.

(a) *Required.*—Each county shall have a county income tax on the Maryland taxable income of:

(1) each resident, other than a fiduciary, who on the last day of the taxable year:

(i) is domiciled in the county; or

(ii) maintains a principal residence or a place of abode in the county;

5. Md. Code Ann. Tax-Gen. § 10-105(a) (LexisNexis 2004) provided in pertinent part:

State income tax rates.

(a) *Individual*.—The State income tax rate for an individual is:

(1) 2% of Maryland taxable income of $1 through $1,000;

(2) 3% of Maryland taxable income of $1,001 through $2,000;

(3) 4% of Maryland taxable income of $2,001 through $3,000; and

(4) for Maryland taxable income in excess of $3,000:

* * * * *

(v) 4.75% for a taxable year beginning after December 31, 2001.

6. Md. Code Ann. Tax-Gen. § 10-106 (LexisNexis 2010) provides:

County income tax rate.

(a) *In general; exception in Howard County*.—(1) Each county shall set, by ordinance or resolution, a county income tax equal to at least 1% but not more than the

percentage of an individual's Maryland taxable income as follows:

(i) 3.05% for a taxable year beginning after December 31, 1998 but before January 1, 2001;

(ii) 3.10% for a taxable year beginning after December 31, 2000 but before January 1, 2002; and

(iii) 3.20% for a taxable year beginning after December 31, 2001.

(2) A county income tax rate continues until the county changes the rate by ordinance or resolution.

(3)(i) A county may not increase its county income tax rate above 2.6% until after the county has held a public hearing on the proposed act, ordinance, or resolution to increase the rate.

(ii) The county shall publish at least once each week for 2 successive weeks in a newspaper of general circulation in the county:

1. notice of the public hearing; and

2. a fair summary of the proposed act, ordinance, or resolution to increase the county income tax rate above 2.6%.

(4) Notwithstanding paragraph (1) or (2) of this subsection, in Howard County, the county income tax rate may be changed only by ordinance and not by resolution.

(b) *Rate change.*—If a county changes its county income tax rate, the county shall:

(1) increase or decrease the rate in increments of one one-hundredth of a percentage point, effective on January 1 of the year that the county designates; and

(2) give the Comptroller notice of the rate change and the effective date of the rate change on or before July 1 prior to its effective date.

7. Md. Code Ann. Tax-Gen. § 10-106.1 (LexisNexis 2010) provides:

Individuals subject to State tax but not county tax.

(a) *Tax imposed.*—An individual subject to the State income tax under § 10-105(a) of this subtitle, but not subject to the county income tax under § 10-106 of this subtitle, shall be subject to the tax imposed under this section.

(b) *Rate.*—The rate of the tax imposed under this section shall be equal to the lowest county income tax rate set by any Maryland county in accordance with § 10-106 of this subtitle.

(c) *Distribution.*—The tax imposed under this section shall be distributed by the Comptroller in accordance with § 2-609 of this article.

8. Md. Code Ann. Tax-Gen. § 10-703 (LexisNexis 2010) provides:

For tax paid by resident to another State.

(a) *In general.*—Except as provided in subsection (b) of this section, a resident may claim a credit only against the State income tax for a taxable year in the amount determined under subsection (c) of this section for State tax on income paid to another state for the year.

(b) *Exceptions*.—A credit under subsection (a) of this section is not allowed to:

(1) a resident other than a fiduciary, if the laws of the other state allow the resident a credit for State income tax paid to this State;

(2) a resident fiduciary, if the fiduciary claims, and the other state allows, a credit for State income tax paid to this State;

(3) a resident for less than the full taxable year for tax on income that is paid to another state during residency in that state; or

(4) a nonresident.

(c) *Amount of credit for resident*.—(1) Except as provided in paragraph (2) of this subsection, the credit allowed a resident under subsection (a) of this section is the lesser of:

(i) the amount of allowable tax on income that the resident paid to another state; or

(ii) an amount that does not reduce the State income tax to an amount less than would be payable if the income subjected to tax in the other state were disregarded.

(2) If the credit allowed a resident under subsection (a) of this section is based on tax that an S corporation pays to another state, the credit allowable to a shareholder:

(i) may not exceed that shareholder's pro rata share of the tax; and

(ii) will be allowed for another state's income taxes or taxes based on income.