

# American College of Tax Counsel Files Amicus Brief With Pennsylvania Supreme Court

*National Association of Tax Lawyers urges Pennsylvania high court to reverse a denial of credit for taxes paid to Delaware*

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*Armando Gomez, President of the American College of Tax Counsel*

American College of Tax Counsel (the "College") announces the filing on September 16, 2022, of an amicus brief with the Supreme Court of Pennsylvania in the case of Diane Zilka, v. Tax Review Board City of Philadelphia, Nos. 20 and 21 EAP 2022. The amicus brief was filed in support of the taxpayer's appeal from a decision of the Commonwealth Court of Pennsylvania, which had upheld decisions of a lower court, the Tax Review Board of the City of Philadelphia, and the Philadelphia Department of Revenue, that had denied the taxpayer a credit for Delaware state income tax paid against her Philadelphia Wage Tax.

The issue in the case is whether state and local taxes must be viewed collectively when applying the limitation on state taxation contained in the Commerce Clause of the U.S. Constitution. During the tax years at issue, the taxpayer, a resident of Philadelphia, paid income taxes to four jurisdictions: the states of Pennsylvania and Delaware; and the cities of Philadelphia and Wilmington. The taxpayer claimed the available credit for income taxes paid to Delaware against her Pennsylvania income taxes, which offset the full amount of her Pennsylvania liability and resulted in excess Delaware credits left over.

In this appeal, the taxpayer sought to have a credit for the income taxes she paid to Wilmington and Delaware applied against her Philadelphia Wage Tax liability. Although Philadelphia allowed the taxpayer a credit for taxes paid to Wilmington against her Philadelphia Wage Tax liability, it denied her the ability to apply the excess credits she had paid to Delaware against the Wage Tax. As a result, the taxpayer, due to her employment in Wilmington, paid a higher total income tax rate than one of her fellow Philadelphia residents who worked entirely in Pennsylvania.

The College's brief argues that this result violates the Commerce Clause. According to Armando Gomez, President of the College, "The Pennsylvania Supreme Court's decision in this case could impact many individual taxpayers and could inform how other states address this issue. The

College hopes that its brief will help inform the Pennsylvania high court of the ramifications its decision could have for so many others who might not have the resources to litigate an issue like this.”

The College urged the Supreme Court of Pennsylvania to reverse the decision of the Commonwealth Court and find that the denial of the excess Delaware credits against the taxpayer’s Philadelphia Wage Tax liability violates the protections afforded by the Commerce Clause. The College argued that when evaluating the restrictions of the Commerce Clause, it is necessary to view the entire state and local tax burden as one.

As Joan C. Arnold, who appeared as counsel of record for the College, explained, “This outcome entirely follows from a 2015 decision of the U.S. Supreme Court dealing with a very similar taxation scheme that held that whether a tax is labeled a ‘state’ tax or a ‘local’ tax does not matter. Rather, it is necessary to view the entire state and local tax burden as one when examining whether a taxation scheme violates the Commerce Clause.” The College’s brief shows that by denying the taxpayer the full credit for Delaware state tax paid, she is subject to a higher tax burden than she would have been if she were a Philadelphia resident working wholly in Pennsylvania, which creates an impermissible burden on her participation in interstate commerce.

You can read the brief on the College’s website by following [this link](#).

### About Amicus Briefs

A brief by Amicus Curiae (“friend of the court”), known familiarly as an amicus brief, allows a person or organization with a strong interest in or important views on the subject matter of a case to file a brief explaining those views and urging the court to rule in a manner consistent with those views. Amicus briefs are often filed in cases of broad public interest and are filed with the permission of the court and typically, as in this instance, with the consent of all the parties in the case. The College’s brief in this case was submitted by its governing Board of Regents, represented by attorneys Joan C. Arnold and Randy L. Varner of the law firm Troutman Pepper Hamilton Sanders LLP in Philadelphia and Harrisburg, Pennsylvania.

### About the American College of Tax Counsel

The American College of Tax Counsel, founded in 1981, is a nonprofit association of tax lawyers in private practice, law school teaching positions, and government, who are recognized for their excellence in tax practice and their substantial contributions and commitment to the profession. One of the chief purposes of the College is to provide a mechanism for input by tax attorneys into the development of U.S. tax laws and policy. A Board of 19 Regents serves as the governing body of the College, with one regent drawn from each of the 13 federal judicial circuits, plus two at-large positions. The Board is rounded out by the four members of the Executive Committee – President, Vice President, Secretary-Treasurer and Last Retiring President. The College can be

found online at <https://www.actconline.org>.

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