SUPREME COURT OF THE UNITED STATES

No. 96–1462

CHRISTOPHER H. LUNDING, ET UX., PETITIONERS *v.* NEW YORK TAX APPEALS TRIBUNAL ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

[January 21, 1998]

JUSTICE O'CONNOR delivered the opinion of the Court.

The Privileges and Immunities Clause, U. S. Const., Art. IV, §2, provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." In this case, we consider whether a provision of New York law that effectively denies only nonresident taxpayers an income tax deduction for alimony paid is consistent with that constitutional command. We conclude that because New York has not adequately justified the discriminatory treatment of nonresidents effected by N. Y. Tax Law §631(b)(6), the challenged provision violates the Privileges and Immunities Clause.

I

A

New York law requires nonresident individuals to pay tax on net income from New York real property or tangible personalty and net income from employment or business, trade, or professional operations in New York. See N. Y. Tax Law §§631(a), (b) (McKinney 1987). Under provisions enacted by the New York Legislature in 1987, the tax on

such income is determined according to a method that takes into consideration the relationship between a nonresident taxpayer's New York source income and the taxpayer's total income, as reported to the Federal Government. N. Y. Tax Law §601(e)(1) (McKinney 1987).

Computation of the income tax nonresidents owe New York involves several steps. First, nonresidents must compute their tax liability "as if" they resided in New York. *Ibid.* The starting point for this computation is federal adjusted gross income, which, in accordance with the Internal Revenue Code, 26 U. S. C. §215, includes a deduction for alimony payments. After various adjustments to federal adjusted gross income, nonresidents derive their "as if" resident taxable income from which "as if" resident tax is computed, using the same tax rates applicable to residents. Once the "as if" resident tax has been computed, nonresidents derive an "apportionment percentage" to be applied to that amount, based on the ratio of New York source income to federal adjusted gross income. N. Y. Tax Law §601(e)(1). The denominator of the ratio, federal adjusted gross income, includes a deduction for alimony paid, by virtue of 26 U. S. C. §215, as incorporated into New York law by N. Y. Tax Law §612(a). The numerator, New York source income, includes the net income from property, employment, or business operations in New York, but, by operation of §631(b)(6), specifically disallows any deduction for alimony paid.[1] In the last step of the computation, nonresidents multiply the "as if" resident tax by the apportionment percentage, thereby computing their actual New York income tax liability. There is no upper limit on the apportionment percentage. Thus, in circumstances where a nonresident's New York income,

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[1] Section 631(b)(6) provides that "[t]he deduction allowed by section two hundred fifteen of the internal revenue code, relating to alimony, shall not constitute a deduction derived from New York sources."

which does not include a deduction for alimony paid, exceeds federal adjusted gross income, which does, the nonresident will be liable for *more than* 100% of the "as if" resident tax.[2]

Section 631(b)(6) was enacted as part of New York's Tax Reform and Reduction Act of 1987. Until then, nonresidents were allowed to claim a pro rata deduction for alimony expenses, pursuant to a New York Court of Appeals decision holding that New York tax law then "reflected a policy decision that nonresidents be allowed the same nonbusiness deductions as residents, but that such deductions be allowed to nonresidents in the proportion of their New York income to income from all sources." *Friedsam* v. *State Tax Comm'n*, 64 N. Y. 2d 76, 81, 473 N. E. 2d 1181, 1184 (1984) (internal quotation marks omitted); see also Memorandum of Governor, L. 1961, ch. 68, N. Y. State Legis. Ann., 1961, p. 398 (describing former N. Y. Tax Law §635(c)(1), which permitted nonresidents to deduct a pro rata portion of their itemized deductions, then including alimony, as "represent[ing] the fairest and most equitable solution to the problem of many years' standing" respecting the taxation of nonresidents working in New York). Although there is no legislative history explaining the rationale for its enactment, §631(b)(6) clearly overruled *Friedsam*'s requirement that New York permit nonresidents a pro rata deduction for alimony payments.

B

In 1990, petitioners Christopher Lunding and his wife,

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[2] See, *e.g.*, 1990 IT–203–I, Instructions for Form IT–203, Nonresident and Part-Year Resident Income Tax Return ("To figure your income percentage, divide the amount . . . in the *New York State Amount* column by the amount . . . in the *Federal Amount* column. . . . If the amount . . . in the *New York State Amount* column is more than the amount . . . in the *Federal Amount* column, the income percentage will be more than 100%").

Barbara, were residents of Connecticut. During that year, Christopher Lunding earned substantial income from the practice of law in New York. That year, he also incurred alimony expenses relating to the dissolution of a previous marriage. In accordance with New York law, petitioners filed a New York Nonresident Income Tax Return to report the New York earnings. Petitioners did not comply with the limitation in §631(b)(6), however, instead deducting a pro rata portion of alimony paid in computing their New York income based on their determination that approximately 48% of Christopher's business income was attributable to New York.

The Audit Division of the New York Department of Taxation and Finance denied that deduction and recomputed petitioners' tax liability. After recalculation without the pro rata alimony deduction, petitioners owed an additional $3,724 in New York income taxes, plus interest. Petitioners appealed the additional assessment to the New York Division of Tax Appeals, asserting that §631(b)(6) discriminates against New York nonresidents in violation of the Privileges and Immunities, Equal Protection, and Commerce Clauses of the Federal Constitution. After unsuccessful administrative appeals, in which their constitutional arguments were not addressed, petitioners commenced an action before the Appellate Division of the New York Supreme Court, pursuant to N. Y. Tax Law §2016 (McKinney 1987).

The New York Supreme Court held that §631(b)(6) violates the Privileges and Immunities Clause, relying upon its decision in *Friedsam* v. *State Tax Comm'n*, 98 App. Div. 2d 26, 470 N. Y. S. 2d 848 (3d Dept. 1983), which had been affirmed by the New York Court of Appeals, see *supra*, at 3. 218 App. Div. 2d 268, 639 N. Y. S. 2d 519 (3d Dept. 1996). According to the court's reasoning, "although a disparity in treatment [of nonresidents] is permitted if valid reasons exist, the Privileges and Immunities Clause pro-

scribes such conduct . . . where there is no substantial reason for the discrimination beyond the mere fact that [nonresidents] are citizens of other States." *Id.*, at 270, 639 N. Y. S. 2d, at 520 (internal quotation marks omitted). Thus, despite the intervening enactment of §631(b)(6), the court concluded that "there exists no substantial reason for the disparate treatment, leaving as '[t]he only criterion . . . whether the payor is a resident or nonresident.'" *Id.*, at 272, 639 N. Y. S. 2d, at 521 (quoting *Friedsam*, 98 App. 2d, at 29, 470 N. Y. S. 2d, at 850).

Respondents appealed to the New York Court of Appeals, which reversed the lower court's ruling and upheld the constitutionality of §631(b)(6). 89 N. Y. 2d 283, 675 N. E. 2d 816 (1996). In its decision, the New York Court of Appeals found that *Shaffer* v. *Carter*, 252 U. S. 37 (1920), and *Travis* v. *Yale & Towne Mfg. Co.*, 252 U. S. 60 (1920), "established that limiting taxation of nonresidents to their in-State income [is] a sufficient justification for similarly limiting their deductions to expenses derived from sources producing that in-State income," and that the constitutionality of a tax law should be determined based on its "'practical effect.'" 89 N. Y. 2d, at 288, 675 N. E. 2d, at 819. The court noted that "the Privileges and Immunities Clause does not mandate absolute equality in tax treatment," and quoted from *Supreme Court of N. H.* v. *Piper*, 470 U. S. 274, 284 (1985), in explaining that the Clause is not violated where "'(i) there is a substantial reason for the difference in treatment; and (ii) the discrimination practiced against nonresidents bears a substantial relationship to the State's objective.'" 89 N. Y. 2d, at 289, 675 N. E. 2d, at 820.

Applying those principles to §631(b)(6), the court determined that the constitutionality of not allowing nonresidents to deduct personal expenses had been settled by *Goodwin* v. *State Tax Comm'n*, 286 App. Div. 694, 146 N. Y. S. 2d 172, aff'd 1 N. Y. 2d 680, 133 N. E. 2d 711 (1955), appeal dism'd, 352 U. S. 805 (1956), in which a

New Jersey resident unsuccessfully challenged New York's denial of tax deductions respecting New Jersey real estate taxes, interest payments, medical expenses, and life insurance premiums. The *Lunding* court adopted two rationales from *Goodwin* in concluding that §631(b)(6) was adequately justified. First, the court reasoned that because New York residents are subject to the burden of taxation on all of their income regardless of source, they should be entitled to the benefit of full deduction of expenses. Second, the court concluded that where deductions represent personal expenses of a nonresident taxpayer, they are more appropriately allocated to the State of residence. 89 N. Y. 2d, at 289–290, 675 N. E. 2d, at 820.

Based on those justifications for §631(b)(6), the court distinguished this case from its post-*Goodwin* decision, *Golden* v. *Tully*, 58 N. Y. 2d 1047, 449 N. E. 2d 406 (1983), in which New York's policy of granting a moving expense deduction to residents while denying it to nonresidents was found to violate the Privileges and Immunities Clause because "[n]o other rationale" besides the taxpayer's nonresidence "was . . . proffered to justify the discrepancy in treating residents and nonresidents." According to the court, *Golden* was decided "solely on the narrow ground that the Tax Commission in its answer and bill of particulars had offered only nonresidence as the explanation for the disallowance" of nonresidents' moving expenses. 89 N. Y. 2d, at 290, 675 N. E. 2d, at 821. The court also distinguished *Friedsam*, *supra*, on the ground that §631(b)(6) was enacted to overrule that decision. 89 N. Y. 2d, at 290, 675 N. E. 2d, at 821.

As to §631(b)(6)'s practical effect, the court noted that "nonresidents are not denied all benefit of the alimony deduction since they can claim the full amount of such payments in computing the hypothetical tax liability 'as if a resident' under Tax Law §601(e)." *Id.*, at 291, 675 N. E. 2d, at 821. The court rejected petitioners' contention that

the lack of legislative history explaining §631(b)(6) was of any importance, finding that "substantial reasons for the disparity in tax treatment are apparent on the face of the statutory scheme." *Ibid.* The court also rejected petitioners' claims that §631(b)(6) violates the Equal Protection and Commerce Clauses. *Ibid.* Those claims are not before this Court.

Recognizing that the ruling of the New York Court of Appeals in this case creates a clear conflict with the Oregon Supreme Court's decision in *Wood* v. *Department of Revenue*, 305 Ore. 23, 749 P. 2d 1169 (1988), and is in tension with the South Carolina Supreme Court's ruling in *Spencer* v. *South Carolina Tax Comm'n*, 281 S. C. 492, 316 S. E. 2d 386 (1984), aff'd by an equally divided Court, 471 U. S. 82 (1985), we granted certiorari. 520 U. S. ___ (1997). We conclude that, in the absence of a substantial reason for the difference in treatment of nonresidents, §631(b)(6) violates the Privileges and Immunities Clause by denying only nonresidents an income tax deduction for alimony payments.

II

A

The object of the Privileges and Immunities Clause is to "strongly . . . constitute the citizens of the United States one people," by "plac[ing] the citizens of each State upon the same footing with the citizens of other States, so far as the advantages resulting from citizenship in those States are concerned." *Paul* v. *Virginia*, 8 Wall. 168, 180 (1869). One right thereby secured is the right of a citizen of any State to "remove to and carry on business in another without being subjected in property or person to taxes more onerous than the citizens of the latter State are subjected to." *Shaffer*, *supra*, at 56; see also *Toomer* v. *Witsell*, 334 U. S. 385, 396 (1948); *Ward* v. *Maryland*, 12 Wall. 418, 430 (1871).

Of course, nonresidents may "be required to make a ratable contribution in taxes for the support of the government." *Shaffer*, 252 U. S., at 53. That duty is one "to pay taxes not more onerous in effect than those imposed under like circumstances upon citizens of the . . . State." *Ibid.*; see also *Ward* v. *Maryland*, 12 Wall. 418, 430 (1871) (nonresidents should not be "subjected to any higher tax or excise than that exacted by law of . . . permanent residents"). Nonetheless, as a practical matter, the Privileges and Immunities Clause affords no assurance of precise equality in taxation between residents and nonresidents of a particular State. Some differences may be inherent in any taxing scheme, given that, "[l]ike many other constitutional provisions, the privileges and immunities clause is not an absolute," *Toomer*, *supra*, at 396, and that "[a]bsolute equality is impracticable in taxation," *Maxwell* v. *Bugbee*, 250 U. S. 525, 543 (1919).

Because state legislatures must draw some distinctions in light of "local needs," they have considerable discretion in formulating tax policy. *Madden* v. *Kentucky*, 309 U. S. 83, 88 (1940). Thus, "where the question is whether a state taxing law contravenes rights secured by [the Federal Constitution], the decision must depend not upon any mere question of form, construction, or definition, but upon the practical operation and effect of the tax imposed." *Shaffer*, *supra*, at 55; see also *St. Louis Southwestern R. Co.* v. *Arkansas*, 235 U. S. 350, 362 (1914) ("[W]hen the question is whether a tax imposed by a State deprives a party of rights secured by the Federal Constitution . . . [w]e must regard the substance, rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the State"). In short, as this Court has noted in the Equal Protection context, "inequalities that result not from hostile discrimination, but occasionally and incidentally in the application of a [tax] system that is not arbitrary in its

classification, are not sufficient to defeat the law." *Maxwell, supra,* at 543.

We have described this balance as "a rule of substantial equality of treatment" for resident and nonresident taxpayers. *Austin* v. *New Hampshire,* 420 U. S. 656, 665 (1975). Where nonresidents are subject to different treatment, there must be "reasonable ground for . . . diversity of treatment." *Travis,* 252 U. S., at 79; see also *Travellers' Ins. Co.* v. *Connecticut,* 185 U. S. 364, 371 (1902) ("It is enough that the State has secured a reasonably fair distribution of burdens"). As explained in *Toomer,* the Privileges and Immunities Clause bars

> "discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus the inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relationship to them. The inquiry must also, of course, be conducted with due regard for the principle that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures." 334 U. S., at 396.

Thus, when confronted with a challenge under the Privileges and Immunities Clause to a law distinguishing between residents and nonresidents, a State may defend its position by demonstrating that "(i) there is a substantial reason for the difference in treatment; and (ii) the discrimination practiced against nonresidents bears a substantial relationship to the State's objective." *Piper,* 470 U. S., at 284.

Our concern for the integrity of the Privileges and Immunities Clause is reflected through a "standard of review

substantially more rigorous than that applied to state tax distinctions, among, say, forms of business organizations or different trades and professions." *Austin*, *supra*, at 663. Thus, as both the New York Court of Appeals, 675 N. E. 2d, at 820, and the State, Brief for Respondent Commissioner of Taxation and Finance 10–11, appropriately acknowledge, the State must defend §631(b)(6) with a substantial justification for its different treatment of nonresidents, including an explanation of how the discrimination relates to the State's justification.

B

Our review of the State's justification for §631(b)(6) is informed by this Court's precedent respecting Privileges and Immunities Clause challenges to nonresident income tax provisions. In *Shaffer* v. *Carter*, the Court upheld Oklahoma's denial of deductions for out-of-state losses to nonresidents who were subject to Oklahoma's tax on in-state income. The Court explained that

> "[t]he difference . . . is only such as arises naturally from the extent of the jurisdiction of the State in the two classes of cases, and cannot be regarded as an unfriendly or unreasonable discrimination. As to residents, it may, and does, exert its taxing power over their income from all sources, whether within or without the State, and it accords to them a corresponding privilege of deducting their losses, wherever these accrue. As to nonresidents, the jurisdiction extends only to their property owned within the State and their business, trade, or profession carried on therein, and the tax is only on such income as is derived from those sources. Hence there is no obligation to accord to them a deduction by reason of losses elsewhere incurred." 252 U. S., at 57.

In so holding, the Court emphasized the practical effect of the provision, concluding that "the nonresident was not

treated more onerously than the resident in any particular, and in fact was called upon to make no more than his ratable contribution to the support of the state government." *Austin*, 420 U. S., at 664.

Shaffer involved a challenge to the State's denial of business-related deductions. The record in *Shaffer* discloses that, while Oklahoma law specified that nonresidents were liable for Oklahoma income tax on "the entire net income from all property owned, and of every business, trade or profession carried on in [Oklahoma]," there was no express statutory bar preventing nonresidents from claiming the same nonbusiness exemptions and deductions as were available to resident taxpayers. See Tr. of Record in *Shaffer* v. *Carter*, O. T. 1919, No. 531, pp. 15–18 (Chapter 164, Oklahoma House Bill No. 599 (1910) §§1, 5, 6, 8); see also Brief on Behalf of Appellant in *Shaffer* v. *Carter*, O. T. 1919, No. 531, p. 91 ("In the trial court, . . . the [Oklahoma] Attorney General asserted that the appellant has the same personal exemptions as a resident of Oklahoma").

In *Travis* v. *Yale & Towne Mfg. Co.*, a Connecticut corporation doing business in New York sought to enjoin enforcement of New York's nonresident income tax laws on behalf of its employees, who were residents of Connecticut and New Jersey. In an opinion issued on the same day as *Shaffer*, the Court affirmed *Shaffer*'s holding that a State may limit the deductions of nonresidents to those related to the production of in-state income. See *Travis*, 252 U. S., at 75–76 (describing *Shaffer* as settling that "there is no unconstitutional discrimination against citizens of other States in confining the deduction of expenses, losses, etc., in the case of non-resident taxpayers, to such as are connected with income arising from sources within the taxing State"). The record in *Travis* clarifies that many of the expenses and losses of nonresidents that New York law so limited were business-related, such as ordinary and neces-

sary business expenses, depreciation on business assets, and depletion of natural resources, such as oil, gas, and timber. At the time that *Travis* was decided, New York law also allowed nonresidents a pro rata deduction for various nonbusiness expenses, such as interest paid (based on the proportion of New York source income to total income), a deduction for taxes paid (other than income taxes) to the extent those taxes were connected with New York income, and a deduction for uncompensated losses sustained in New York resulting from limited circumstances, namely nonbusiness transactions entered into for profit and casualty losses. Both residents and nonresidents were entitled to the same deduction for contributions to charitable organizations organized under the laws of New York. Tr. of Record in *Travis* v. *Yale & Towne Mfg. Co.*, O. T. 1919, No. 548 (State of New York, The A, B, C of the Personal Income Tax Law, pp. 11–12, 14, ¶¶42, 44 (1919)). Thus, the statutory provisions disallowing nonresidents' tax deductions at issue in *Travis* essentially mirrored those at issue in *Shaffer* because they tied nonresidents' deductions to their in-state activities.

Another provision of New York's nonresident tax law challenged in *Travis* did not survive scrutiny under the Privileges and Immunities Clause, however. Evincing the same concern with practical effect that animated the *Shaffer* decision, the *Travis* Court struck down a provision that denied only nonresidents an exemption from tax on a certain threshold of income, even though New York law allowed nonresidents a corresponding credit against New York taxes in the event that they paid resident income taxes in some other State providing a similar credit to New York residents. The Court rejected the argument that the rule was "a case of occasional or accidental inequality due to circumstances personal to the taxpayer." 252 U. S., at 80. Nor was denial of the exemption salvaged "upon the theory that non-residents have untaxed

income derived from sources in their home States or elsewhere outside of the State of New York, corresponding to the amount upon which residents of that State are exempt from taxation [by New York] under this act," because "[t]he discrimination is not conditioned upon the existence of such untaxed income; and it would be rash to assume that non-residents taxable in New York under this law, as a class, are receiving additional income from outside sources equivalent to the amount of the exemptions that are accorded to citizens of New York and denied to them." *Id.*, at 81. Finally, the Court rejected as speculative and constitutionally unsound the argument that States adjoining New York could adopt an income tax, "in which event, injustice to their citizens on the part of New York could be avoided by providing similar exemptions similarly conditioned." *Id.*, at 82.

In *Austin*, a more recent decision reviewing a State's taxation of nonresidents, we considered a commuter tax imposed by New Hampshire, the effect of which was to tax only nonresidents working in that State. The Court described its previous decisions, including *Shaffer* and *Travis*, as "establishing a rule of substantial equality of treatment for the citizens of the taxing State and nonresident taxpayers," under which New Hampshire's one-sided tax failed. 420 U. S., at 665.

Travis and *Austin* make clear that the Privileges and Immunities Clause prohibits a State from denying nonresidents a general tax exemption provided to residents, while *Shaffer* and *Travis* establish that States may limit nonresidents' deductions of business expenses and nonbusiness deductions based on the relationship between those expenses and in-state property or income. While the latter decisions provide States a considerable amount of leeway in aligning the tax burden of nonresidents to in-state activities, neither they nor *Austin* can be fairly read as holding that the Privileges and Immunities Clause

permits States to categorically deny personal deductions to a nonresident taxpayer, without a substantial justification for the difference in treatment.

III

In this case, New York acknowledges the right of nonresidents to pursue their livelihood on terms of substantial equality with residents. There is no question that the issue presented in this case is likely to affect many individuals, given the fact that it is common for nonresidents to enter New York City to pursue their livelihood, "it being a matter of common knowledge that from necessity, due to the geographical situation of [New York City], in close proximity to the neighboring States, many thousands of men and women, residents and citizens of those States, go daily from their homes to the city and earn their livelihood there." *Travis*, 252 U. S., at 80. In attempting to justify the discrimination against nonresidents effected by §631(b)(6), respondents assert that because the State only has jurisdiction over nonresidents' in-state activities, its limitation on nonresidents' deduction of alimony payments is valid. Invoking *Shaffer* and *Travis*, the State maintains that it should not be required to consider expenses "wholly linked to personal activities outside New York." Brief for Respondent Commissioner of Taxation and Finance 24. We must consider whether that assertion suffices to substantially justify the challenged statute.

A

Looking first at the rationale the New York Court of Appeals adopted in upholding §631(b)(6), we do not find in the court's decision any reasonable explanation or substantial justification for the discriminatory provision. Although the court purported to apply the two-part inquiry derived from *Toomer* and *Piper*, in the end, the justification for §631(b)(6) was based on rationales borrowed from another case, *Goodwin* v. *State Tax Comm'n*, 286

App. Div. 694, 146 N. Y. S. 2d 172 (1955), aff'd 1 N. Y. 2d 680 133 N. E. 2d 711, appeal dism'd, 352 U. S. 805 (1956). There, a New Jersey resident challenged New York's denial of deductions for real estate taxes and mortgage interest on his New Jersey home, and his medical expenses and life insurance premiums. The challenge in that case, however, was to a provision of New York tax law substantially similar to that considered in *Travis*, under which nonresident taxpayers were allowed deductions "'only if and to the extent that, they are connected with [taxable] income arising from sources within the state.'" 286 App. Div., at 695, 146 N. Y. S. 2d, at 175 (quoting then N. Y. Tax Law §360(11)).

There is no analogous provision in §631(b)(6), which plainly limits nonresidents' deduction of alimony payments, irrespective of whether those payments might somehow relate to New York-source income. Although the *Goodwin* court's rationale concerning New York's disallowance of nonresidents' deduction of life insurance premiums and medical expenses assumed that such expenses, "made by [the taxpayer] in the course of his personal activities . . . must be regarded as having taken place in . . . the state of his residence," *id.*, at 70, 146 N. Y. S. 2d, at 180, the court also found that those expenses "embodie[d] a governmental policy designed to serve a legitimate social end," *ibid.*, namely "to encourage [New York] citizens to obtain life insurance protection and . . . to help [New York] citizens bear the burden of an extraordinary illness or accident," *id.*, at 700, 146 N. Y. S. 2d, at 179.

In this case, the New York Court of Appeals similarly described petitioners' alimony expenses as "wholly linked to personal activities outside the State," but did not articulate any policy basis for §631(b)(6), save a reference in its discussion of petitioners' Equal Protection Clause claim to the State's "policy of taxing only those gains realized

and losses incurred by a nonresident in New York, while taxing residents on all income." 89 N. Y. 2d, at 291, 675 N. E. 2d, at 821. Quite possibly, no other policy basis for §631(b)(6) exists, given that, at the time *Goodwin* was decided, New York appears to have allowed nonresidents a deduction for alimony paid as long as the recipient was a New York resident required to include the alimony in income. See N. Y. Tax Law §360(17) (1944). And for several years preceding §631(b)(6)'s enactment, New York law permitted nonresidents to claim a pro rata deduction of alimony paid regardless of the recipient's residence. See *Friedsam*, 64 N. Y. 2d, at 81–82, 473 N. E. 2d, at 1184 (interpreting N. Y. Tax Law §635(c)(1) (1961)).

In its reliance on *Goodwin*, the New York Court of Appeals also failed to account for the fact that, through its broad 1987 tax reforms, New York adopted a new system of nonresident taxation that ties the income tax liability of nonresidents to the tax that they would have paid if they were residents. Indeed, a nonresident's "as if" tax liability, which determines both the tax rate and total tax owed, is based on federal adjusted gross income from *all* sources, not just New York sources. In computing their "as if" resident tax liability, nonresidents of New York are permitted to consider every deduction that New York residents are entitled to, both business and personal. It is only in the computation of the apportionment percentage that New York has chosen to isolate a specific deduction of nonresidents, alimony paid, as entirely nondeductible under any circumstances. Further, after *Goodwin* but before this case, the New York Court of Appeals acknowledged, in *Friedsam*, that the State's policy and statutes favored parity, on a pro rata basis, in the allowance of personal deductions to residents and nonresidents. *Friedsam*, *supra*. Accordingly, in light of the questionable relevance of *Goodwin* to New York's current system of taxing nonresidents, we do not agree with the New York Court of Ap-

peals that "substantial reasons for the disparity in tax treatment are apparent on the face of [§631(b)(6)]," 89 N. Y. 2d, at 291, 675 N. E. 2d, at 821.

We also take little comfort in the fact, noted by the New York Court of Appeals, that §631(b)(6) does not deny nonresidents all benefit of the alimony deduction because that deduction is included in federal adjusted gross income, one of the components in the nonresident's computation of his New York tax liability. See *id.*, at 290–291, 675 N. E. 2d, at 821. That finding seems contrary to the impression of New York's Commissioner of Taxation and Finance as expressed in an advisory opinion, *In re Rosenblatt*, 1989–1990 Transfer Binder, CCH N. Y. Tax Rep. ¶252–998, p. 17,969 (Jan. 18, 1990), in which the Commissioner explained that "[t]he effect of [§631(b)(6)'s] allowance of the [alimony] deduction in the . . . denominator and disallowance in the numerator is that Petitioner cannot get the benefit of a proportional deduction of the alimony payments made to his spouse." In any event, respondents have never argued to this Court that §631(b)(6) effects anything other than a denial of nonresidents' alimony deductions. Though the inclusion of the alimony deduction in a nonresident's federal adjusted gross income reduces the nonresident's "as if" tax liability, New York effectively takes the alimony deduction back in the "apportionment percentage" used to determine the actual tax owed, because the numerator of that percentage does not include any deduction for alimony paid, while the denominator does include such a deduction.

In summarizing its holding, the New York Court of Appeals explained that, because "there can be no serious argument that petitioners' alimony deductions are legitimate business expenses[,] . . . the approximate equality of tax treatment required by the Constitution is satisfied, and greater fine-tuning in this tax scheme is not constitutionally mandated." 89 N. Y. 2d, at 291, 675 N. E. 2d, at

821. This Court's precedent, however, should not be read to suggest that tax schemes allowing nonresidents to deduct only their business expenses are *per se* constitutional, and we must accordingly inquire further into the State's justification for §631(b)(6) in light of its practical effect.

B

Turning to respondents' arguments to this Court, as an initial matter, we reject the State's suggestion that this Court's summary dismissals in several other cases should be dispositive of the question presented in this case. See Brief for Respondent Commissioner of Taxation and Finance 15–16, n. 8.[3] Although we have noted that "[o]ur summary dismissals are . . . to be taken as rulings on the merits in the sense that they rejected the specific challenges presented . . . and left undisturbed the judgment appealed from," we have also explained that they do not

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[3] See *Goodwin* v. *State Tax Comm'n*, 286 App. Div. 694, 146 N. Y. S. 2d 172, aff'd, 1 N. Y. 2d 680, 133 N. E. 2d 711 (1955) (involving State's denial of deductions not related to in-state activities, including medical expenses and life insurance premiums), appeal dism'd, 352 U. S. 805 (1956); see also *Lung* v. *O'Chesky*, 94 N. M. 802, 617 P. 2d 1317 (1980) (involving State's denial of grocery and medical tax rebates to nonresidents), appeal dism'd, 450 U. S. 961 (1981); *Rubin* v. *Glaser*, 83 N. J. 299, 416 A. 2d 382 (involving State's limitation of homestead tax rebate to principal residences of residents), appeal dism'd, 449 U. S. 977 (1980); *Davis* v. *Franchise Tax Board*, 71 Cal. App. 3d 998, 139 Cal. Rptr. 797 (1977) (involving State's denial of income averaging method of tax computation to nonresidents), appeal dism'd, 434 U. S. 1055 (1978); *Wilson* v. *Department of Revenue*, 267 Ore. 103, 514 P. 2d 1334 (1973) (involving State's limitation of nonresident's deductions to those connected with in-state income), appeal dism'd, 416 U. S. 964 (1974); *Anderson* v. *Tiemann*, 182 Neb. 393, 155 N. W. 2d 322 (1967) (involving State's denial of food sales tax credit to nonresidents), appeal dism'd, 390 U. S. 714 (1968); *Berry* v. *State Tax Comm'n*, 241 Ore. 580, 397 P. 2d 780 (1964) (involving State's limitation of nonresidents' personal deductions to those connected with in-state income), appeal dism'd, 382 U. S. 16 (1965).

"have the same precedential value . . . as does an opinion of this Court after briefing and oral argument on the merits." *Washington* v. *Confederated Bands and Tribes of Yakima Nation*, 439 U. S. 463, 477, n. 20 (1979) (citations and internal quotation marks omitted). "It is not at all unusual for the Court to find it appropriate to give full consideration to a question that has been the subject of previous summary action," *ibid.*, particularly where, as here, other courts have arrived at dissimilar outcomes. In any event, none of the cases on which the State relies involved the unique problem presented here, the complete denial of deductions for nonresidents' alimony payments.

In the context of New York's overall scheme of nonresident taxation, §631(b)(6) is an anomaly. New York tax law currently permits nonresidents to avail themselves of what amounts to a pro rata deduction for other tax-deductible personal expenses besides alimony. Before 1987, New York law also allowed nonresidents to deduct a pro rata share of alimony payments. The New York State Tax Commissioner's advisory opinion in *In re Rosenblatt* indicates that §631(b)(6) may have been intended to overrule *Friedsam*. See *In re Rosenblatt*, *supra*, ¶252–998, at 17,969 (Section 631(b)(6) "specifically reversed *Friedson [sic]* v. *State Tax Commission*, 64 N. Y. 2d 76 (1984), which had allowed an alimony deduction to a nonresident according to the formula for allocation of itemized deductions by the nonresident"). Certainly, as the New York Court of Appeals found, §631(b)(6) "had the effect of removing [the] impairment" imposed by *Friedsam*, 89 N. Y. 2d, at 290, 675 N. E. 2d, at 821, thereby implying a disavowal of the State's previous policy of substantial equality between residents and nonresidents.

The policy expressed in *Friedsam*, which acknowledged the principles of equality and fairness underlying the Privileges and Immunities Clause, was not merely an "impairment," however. Although the State has considerable

freedom to establish and adjust its tax policy respecting nonresidents, the end results must, of course, comply with the Federal Constitution, and any provision imposing disparate taxation upon nonresidents must be appropriately justified. As this Court has explained, where "the power to tax is not unlimited, validity is not established by the mere imposition of a tax." *Mullaney* v. *Anderson*, 342 U. S. 415, 418 (1952).

To justify §631(b)(6), the State refers to a statement, presented in 1959 by New York's then-Commissioner of Taxation and Finance before a Subcommittee of the House Judiciary Committee. In that statement, the Commissioner explained, "[s]ince legally we do not and cannot recognize the existence of [non-New York source] income, we have felt that, in general, we cannot recognize . . . other deductions, which, in the main, are of a personal nature and are unconnected with the production of income in New York.'" Brief for Respondent Commissioner of Taxation and Finance 14 (quoting statement of Hon. Joseph H. Murphy, Taxation of Income of Nonresidents, Hearing on H. J. Res. 33 et al. and H. R. 4174 et al. before Subcommittee No. 2 of the House Committee on the Judiciary, 86th Cong., 1st Sess., 98–99 (1959)). Yet there is good reason to question whether that statement actually is a rationale for §631(b)(6), given substantial evidence to the contrary, in both the history of the State's treatment of nonresidents' alimony deductions,[4] and its current treatment of other personal deductions.

Moreover, to the extent that the cited testimony sug-

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[4]See 1943 N. Y. Laws, ch. 245, §3 (alimony deductions allowed only when recipient is subject to New York tax); 1944 N. Y. Laws, ch. 333, §2 (alimony deduction allowed to all residents and to nonresidents only if recipient is subject to New York tax); 1961 N. Y. Laws, ch. 68, §1 (itemized deductions, including alimony, generally allowed to nonresidents in proportion to New York source income).

gests that no circumstances exist under which a State's denial of personal deductions to nonresidents could be constrained, we reject its premise. Certainly, as the Court found in *Travis*, 252 U. S., at 79–80, nonresidents must be allowed tax exemptions in parity with residents. And the most that the Court has suggested regarding nonresidents' nonbusiness expenses is that their deduction may be limited to the proportion of those expenses rationally related to in-state income or activities. See *Shaffer*, 252 U. S., at 56–57.

As a practical matter, the Court's interpretation of the Privileges and Immunities Clause in *Travis* and *Shaffer* implies that States may effectively limit nonresidents' deduction of certain personal expenses based on a reason as simple as the fact that those expenses are clearly related to residence in another State. But here, §631(b)(6) does not incorporate such analysis on its face or, according to the New York Court of Appeals, through legislative history, see 89 N. Y. 2d, at 290–291, 675 N. E. 2d, at 821. Moreover, there are situations in which §631(b)(6) could operate to require nonresidents to pay significantly more tax than identically situated residents. For example, if a nonresident's earnings were derived primarily from New York sources, the effect of §631(b)(6) could be to raise the tax apportionment percentage above 100%, thereby requiring that individual to pay *more* tax than an identically situated resident, solely because of the disallowed alimony deduction. Under certain circumstances, the taxpayer could even be liable for New York taxes approaching or even exceeding net income.

There is no doubt that similar circumstances could arise respecting the apportionment for tax purposes of income or expenses based on in-state activities without a violation of the Privileges and Immunities Clause. Such was the case in *Shaffer*, despite the petitioner's attempt to argue that he should be allowed to offset net business income

taxed by Oklahoma with business losses incurred in other States. See 252 U. S., at 57. It is one thing, however, for an anomalous situation to arise because an individual has greater profits from business activities or property owned in one particular State than in another. An entirely different situation is presented by a facially inequitable and essentially unsubstantiated taxing scheme that denies only nonresidents a tax deduction for alimony payments, which while surely a personal matter, see *United States* v. *Gilmore*, 372 U. S. 39, 44 (1963), arguably bear some relationship to a taxpayer's overall earnings. Alimony payments also differ from other types of personal deductions, such as mortgage interest and property tax payments, whose situs can be determined based on the location of the underlying property. Thus, unlike the expenses discussed in *Shaffer*, alimony payments can not be so easily characterized as "losses elsewhere incurred." 252 U. S., at 57. Rather, alimony payments reflect an obligation of some duration that is determined in large measure by an individual's income generally, wherever it is earned. The alimony obligation may be of a "personal" nature, but it cannot be viewed as geographically fixed in the manner that other expenses, such as business losses, mortgage interest payments, or real estate taxes, might be.

Accordingly, contrary to the dissent's suggestion, *post*, at 7, 13, we do not propose that States are required to allow nonresidents a deduction for all manner of personal expenses, such as taxes paid to other States or mortgage interest relating to an out-of-State residence. Nor do we imply that States invariably must provide to nonresidents the same manner of tax credits available to residents. Our precedent allows States to adopt justified and reasonable distinctions between residents and nonresidents in the provision of tax benefits, whether in the form of tax deductions or tax credits. In this case, however, we are not satisfied by the State's argument that it need not consider

the impact of disallowing nonresidents a deduction for alimony paid merely because alimony expenses are personal in nature, particularly in light of the inequities that could result when a nonresident with alimony obligations derives nearly all of her income from New York, a scenario that may be "typical," see *Travis*, 252 U. S., at 80. By requiring nonresidents to pay more tax than similarly situated residents solely on the basis of whether or not the nonresidents are liable for alimony payments, §631(b)(6) violates the "rule of substantial equality of treatment" this Court described in *Austin*, 420 U. S., at 665.

C

Respondents also propose that §631(b)(6) is "consistent with New York's taxation of families generally." Brief for Respondent Commissioner of Taxation and Finance 14–15. It has been suggested that one purpose of New York's 1987 tax law changes was to adopt a regime of "income splitting," under which each spouse in a marital relationship is taxed on an equal share of the total income from the marital unit. *Ibid.* (citing McIntyre & Pomp, State Income Tax Treatment of Residents and Nonresidents Under the Privileges and Immunities Clause, 13 State Tax Notes 245, 249 (1997)). A similar effect is achieved in the case of marital dissolution by allowing the payer of alimony to exclude the payment from income and requiring the recipient to report a corresponding increase in income. Such treatment accords with provisions adopted in 1942 by the Federal Government as a means of adjusting tax burdens on alimony payers who, without a deduction for alimony paid, could face a tax liability greater than their remaining income after payment of alimony. See Committee Report, Revenue Act of 1942, 1942–2 C. B. 409.

In the federal system, when one resident taxpayer pays alimony to another, the payer's alimony deduction is offset by the alimony income reported by the recipient, leading

to parity in the allocation of the overall tax burden. Section 631(b)(6), however, disallows nonresidents' entire alimony expenses with no consideration given to whether New York income tax will be paid by the recipients. Respondents explain that such concerns are simply irrelevant to New York's taxation of nonresidents, because "[e]xtending the benefit of income splitting to nonresidents is inappropriate on tax policy grounds because nonresidents are taxed by New York on only a slice of their income– that derived from New York sources." Brief for Respondent Commissioner of Taxation and Finance 15. Such analysis, however, begs the question whether there is a substantial reason for the difference in treatment, and is therefore not appreciably distinct from the State's assertion that no such justification is required because §631(b)(6) does not concern business expenses.

Indeed, we fail to see how New York's disregard for the residence of the alimony recipient does anything more than point out potential inequities in the operation of §631(b)(6). Certainly, the concept of income splitting works when both former spouses are residents of the same State, because one spouse receives a tax deduction corresponding to the other's reported income, thereby making the state treasury whole (after adjustment for differences in the spouses' respective tax rates). The scheme also results in an equivalent allocation of total tax liability when one spouse is no longer a resident of the same State, because each spouse retains the burden of paying resident income taxes due to his or her own State on their share of the split income. The benefit of income splitting disappears, however, when a State in which neither spouse resides essentially imposes a surtax on the alimony, such as the tax increase New York imposes through §631(b)(6). And, at the extreme, when a New York resident receives alimony payments from a nonresident New York taxpayer, §631(b)(6) results in a double-taxation windfall for the

State: the recipient pays taxes on the alimony but the nonresident payer is denied any deduction. Although such treatment may accord with the Federal Government's treatment of taxpayers who are nonresident aliens, see 26 U. S. C. §§872 and 873, the reasonableness of such a scheme on a national level is a different issue that does not implicate the Privileges and Immunities Clause guarantee that individuals may migrate between States to live and work.

D

Finally, several States, as *amici* for respondents, assert that §631(b)(6) could not "have any more than a *de minimis* effect on the run-of-the-mill taxpayer or comity among the States," because States imposing an income tax typically provide a deduction or credit to their residents for income taxes paid to other States. Brief for State of Ohio *et al.* 8. Accordingly, their argument runs, "[a]ll things being equal . . . the taxpayer would pay roughly the same total tax in the two States, the only difference being that [the taxpayer's resident State] would get more and New York less of the revenue." *Ibid*. There is no basis for such an assertion in the record before us. In fact, in the year in question, Connecticut imposed no income tax on petitioners' earned income. Reply Brief for Petitioners 4, n. 1. "Nor, we may add, can the constitutionality of one State's statutes affecting nonresidents depend upon the present configuration of the statutes of another State." *Austin*, 420 U. S., at 668; see also *Travis*, 252 U. S., at 81–82.

IV

In sum, we find that the State's inability to tax a nonresident's entire income is not sufficient, in and of itself, to justify the discrimination imposed by §631(b)(6). While States have considerable discretion in formulating their income tax laws, that power must be exercised within the limits of the Federal Constitution. Tax provisions im-

posing discriminatory treatment on nonresident individuals must be reasonable in effect and based on a substantial justification other than the fact of nonresidence.

Although the Privileges and Immunities Clause does not prevent States from requiring nonresidents to allocate income and deductions based on their in-state activities in the manner described in *Shaffer* and *Travis*, those opinions do not automatically guarantee that a State may disallow nonresident taxpayers every manner of nonbusiness deduction on the assumption that such amounts are inevitably allocable to the State in which the taxpayer resides. Alimony obligations are unlike other expenses that can be related to activities conducted in a particular State or property held there. And as a personal obligation that generally correlates with a taxpayer's total income or wealth, alimony bears some relationship to earnings regardless of their source. Further, the manner in which New York taxes nonresidents, based on an allocation of an "as if" resident tax liability, not only imposes upon nonresidents' income the effect of New York's graduated tax rates but also imports a corresponding element of fairness in allowing nonresidents a pro rata deduction of other types of personal expenses. It would seem more consistent with that taxing scheme and with notions of fairness for the State to allow nonresidents a pro rata deduction for alimony paid, as well.

Under the circumstances, we find that respondents have not presented a substantial justification for the categorical denial of alimony deductions to nonresidents. The State's failure to provide more than a cursory justification for §631(b)(6) smacks of an effort to "penaliz[e] the citizens of other States by subjecting them to heavier taxation merely because they are such citizens," *Toomer*, 334 U. S., at 408 (Frankfurter, J., concurring). We thus hold that §631(b)(6) is an unwarranted denial to the citizens of other States of the privileges and immunities enjoyed by the citizens of

New York.

Accordingly, the decision of the New York Court of Appeals is reversed and remanded for proceedings not inconsistent with this opinion.

It is so ordered.