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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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LUNDING ET UX. *v.* NEW YORK TAX APPEALS TRIBUNAL ET AL.

CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

No. 96–1462. Argued November 5, 1997– Decided January 21, 1998

New York Tax Law §631(b)(6) effectively denies only nonresident taxpayers a state income tax deduction for alimony paid. Petitioners– a Connecticut couple required to pay higher taxes on their New York income when that State denied their attempted deduction of a pro rata portion of the alimony petitioner husband paid a previous spouse– exhausted their administrative remedies and commenced this action, asserting, among other things, that §631(b)(6) discriminates against New York nonresidents in violation of the Privileges and Immunities Clause, U. S. Const., Art. IV, §2. The New York Supreme Court agreed and held §631(b)(6) to be unconstitutional, but the New York Court of Appeals reversed, holding that §631(b)(6) was adequately justified because New York residents who are subject to taxation on all of their income regardless of source should be entitled to the benefit of full deduction of expenses, while personal expenses of a nonresident taxpayer are more appropriately allocated to the State of residence. The court also noted that §631(b)(6)'s practical effect did not deny nonresidents all benefit of the alimony deduction, because they could claim the full amount of such payments in computing their hypothetical tax liability "as if" a resident, one of the steps involved in computing nonresident tax under New York law.

Held: In the absence of a substantial reason for the difference in treatment of New York nonresidents, §631(b)(6) violates the Privileges and Immunities Clause by denying only nonresidents an income tax deduction for alimony payments. Pp. 7–27.

(a) While States have considerable discretion in formulating their income tax laws, that power must be exercised within the limits of the Federal Constitution. 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." *Supreme Court of N. H.* v. *Piper*, 470 U. S. 274, 284. Thus, New York 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. *E.g.*, *Shaffer* v. *Carter*, 252 U. S. 37, 55. Pp. 7–10.

(b) This Court's precedent respecting Privileges and Immunities Clause challenges to nonresident income tax provisions informs the review of the State's justification for §631(b)(6). *Travis* v. *Yale & Towne Mfg. Co.*, 252 U. S. 60, 80–82, and *Austin* v. *New Hampshire*, 420 U. S. 656, 665, make clear that the Clause prohibits a State from denying nonresidents a general tax exemption provided to residents, and *Shaffer*, *supra*, at 57, and *Travis*, *supra*, at 75–76, 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 considerable leeway in aligning nonresidents' tax burden to their in-state activities, neither those decisions nor *Austin* can be fairly read to hold that the Clause permits States to categorically deny personal deductions to a nonresident taxpayer without a substantial justification for the difference in treatment. Pp. 10–14.

(c) Respondents' attempt to justify §631(b)(6)'s limitation on nonresidents' deduction of alimony payments by asserting that the State only has jurisdiction over their in-state activities is rejected. The State's contention that, under *Shaffer* and *Travis*, it should not be required to consider expenses "wholly linked to personal activities outside New York" does not suffice. Pp. 14–25.

(i) The New York Court of Appeals' decision upholding §631(b)(6) does not contain any reasonable explanation or substantial justification for the discriminatory provision. The case on which that decision was based, *Goodwin* v. *State Tax Commission*, 286 A. D. 694, 146 N. Y. S. 2d 172, aff'd 1 N. Y. 2d 680, appeal dism'd, 352 U. S. 805, is of questionable relevance here, since it involved a state tax provision that is not analogous to §631(b)(6), was rendered before New York adopted its present system of nonresident taxation, and was called into doubt in a subsequent decision. Unlike the New York Court of Appeals, this Court takes little comfort in the fact that inclusion of the alimony deduction in a nonresident's federal adjusted gross income reduces the nonresident's "as if" tax liability, because New York effectively takes the alimony deduction back in the "apportionment percentage" used to determine the actual tax owed. In summarizing

its holding in the present case, the New York Court of Appeals explained that, because there could be no serious argument that petitioners' alimony deductions were legitimate business expenses, the approximate equality of tax treatment required by the Constitution was satisfied. 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. Accordingly, further inquiry into the State's justification for §631(b)(6) in light of its practical effect is required. Pp. 14–18.

(ii) Respondents' arguments to this Court do not supply adequate justification for §631(b)(6). The State's suggestion that the Court's summary dismissals in *Goodwin* and other cases should be dispositive here is rejected, because such dismissals do not have the same precedential value as do opinions of the Court after briefing and oral argument. Moreover, none of those cases involved the unique problem of the complete denial of deductions for nonresidents' alimony payments. Also unavailing is the State's reliance on a statement by one of its former Tax Commissioners that, because it cannot legally recognize the existence of non-New York source income, the State cannot recognize deductions of a personal nature unconnected with the production of income in New York. There is good reason to question whether that statement actually is a rationale for §631(b)(6), given evidence that the State currently permits nonresidents what amounts to a pro rata deduction for personal expenses other than alimony and that, before 1987, it allowed them to deduct a pro rata share of alimony payments. Moreover, this Court is 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*, *supra*, 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" required by *Austin*, *supra*, at 665. Pp. 18–23.

(iii) The Court also rejects respondents' claim that §631(b)(6) is justified by the State's adoption of an "income splitting" regime that creates parity in the tax treatment of the spouses in a dissolved marital relationship by allowing the alimony payer to exclude the payment from income and requiring the recipient to report a corresponding increase in income. Section 631(b)(6) disallows nonresidents' entire alimony expenses without consideration as to whether New York income tax will be paid by the alimony recipients.

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Respondents' analysis begs the question whether there is a substantial reason for this difference in treatment, and is therefore not appreciably distinct from the State's assertion that no justification is required because §631(b)(6) does not concern business expenses. Pp. 23–25.

(iv) There is no basis in the record for the assertions of several respondents' state *amici* that §631(b)(6) would have only a *de minimis* effect on the run-of-the-mill taxpayer or on comity among the States because States typically give their residents a deduction or credit for income taxes paid to other States, so that the taxpayer would pay roughly the same overall tax. Further, the constitutionality of one State's statutes affecting nonresidents cannot depend upon the statutes of other States. *E.g., Austin, supra,* at 668. P. 25.

89 N. Y. 2d 283, 675 N. E. 2d 816, reversed and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which STEVENS, SCALIA, SOUTER, THOMAS, and BREYER, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which REHNQUIST, C. J., and KENNEDY, J., joined.