

SUPREME COURT OF LOUISIANA

No. 2018-CA-0728

IVAN I. SMITH, JR. AND GLORIA G. SMITH

VERSUS

**KIMBERLY L. ROBINSON, SECRETARY OF THE
DEPARTMENT OF REVENUE, STATE OF LOUISIANA**

**ON APPEAL
FROM THE NINETEENTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE**

ON APPLICATION FOR REHEARING

PER CURIAM:*

Defendant, Kimberly L. Robinson, in her capacity as Secretary of the Department of Revenue of the State of Louisiana, has filed an application for rehearing relative to this Court's opinion affirming the district court's declaration of unconstitutionality of 2015 La. Acts No. 109 ("Act 109"). After review and full consideration of said application, we hereby grant rehearing for the sole purpose of clarifying this Court's opinion.

This matter came before this Court solely on the issue of the district court's declaration of unconstitutionality of Act 109 in its entirety. In addressing the constitutionality, vel non, of Act 109, the focus was solely on whether or not the act created an impermissible double taxation. This Court's opinion found that Act 109, taken as a whole, did in fact create an impermissible double taxation in that it impermissibly discriminated against interstate commerce in violation of the dormant Commerce Clause of the United States Constitution. The issue of severability of the

* Retired Judge Freddie Pitcher, Jr., assigned as Justice ad hoc, sitting for Crichton, J., recused.

various subparts of Act 109, vis-à-vis the constitutionality of the act as a whole, was neither raised nor addressed until this application for rehearing was filed.

Upon this Court's review of the issue of severability within the act, we find that only La.R.S. 47:33(A)(4), and not any other part or portion of the act, creates the prohibited double taxation. Thus, we modify and amend this Court's original opinion to reflect an affirmation of the district court's finding of unconstitutionality of Act 109 as it pertains to La.R.S. 47:33(A)(4) only, and we do not rule upon the unaddressed issue of any other portions of the act, particularly, La.R.S. 47:33(A)(5) and (A)(6). Therefore, the CONCLUSION and DECREE, set forth in the slip opinion at page 21, is modified and amended as follows:

CONCLUSION

We find that the Taxpayers' payment of the franchise tax under the 2006 revisions to the Texas franchise tax provisions constitute income taxes paid to another state pursuant to the 2015 revisions of La.R.S. 47:33. Further, we hold that La.R.S. 47:33(A)(4) of 2015 La. Acts No. 109 is unconstitutional, as it constitutes a double taxation and is thus in violation of the dormant Commerce Clause of the United States Constitution.

DECREE

For the reasons stated herein, we affirm the district court judgment declaring 2015 La. Acts No. 109 unconstitutional only as to La.R.S. 47:33(A)(4) and no further.

AFFIRMED AS AMENDED.