

TAX APPEAL BOARD OF THE STATE OF DELAWARE

RALPH C. & MARIE D. SCHREYER,

Petitioners,

v.

DIRECTOR OF REVENUE,

Respondent.

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DOCKET NO. 1139

BEFORE: Joseph S. Yucht, Esquire, Chairman; John H. Cordrey, Esquire, Vice Chairman, David C. Eppes and Regina Dudzic, Members.

Ralph C. Schreyer, Pro Se.

Joseph Patrick Hurley, Esquire, Deputy Attorney General for Respondent.

DECISION AND ORDER

DAVID C. EPPES, MEMBER. The issue before the Board in this case is the proper way to determine the credit against tax allowed to a Delaware resident for taxes paid to another state. In this case Petitioners, Delaware residents, were the owners of real property located in South Carolina. Petitioners sold the property for a gain in 1991. The Petitioners properly computed their Delaware tax and included the entire gain in their Delaware taxable income. Petitioners also paid \$2,800 in estimated tax to South Carolina which was withheld at settlement of the property under provisions of South Carolina law. Petitioners claimed a credit on their Delaware tax return for the entire \$2,800 that was withheld at settlement. The Petitioners 1991 South Carolina Non-Resident tax return shows that the actual tax liability computed on the return was \$1,091. The remaining \$1,709 was refunded to Petitioners in 1992.

Delaware law is similar to many states' in this area. 30 Del. C. Sec. 1111 states that a taxpayer shall be allowed a credit for "the amount of any income tax imposed on him" by another state and also subject to Delaware tax. Petitioner argues that the tax imposed is the amount withheld at the

source, or \$2,800. Petitioners advanced several arguments based on the linkage of the Delaware tax system to the federal tax system to further support their contention.

The Board determined that the clear meaning and intent of the law is that a credit be allowed for the tax actually imposed by the other state. "Tax imposed" is determined by completing the other state's tax return to determine the ultimate taxable income subject to tax in both states and the tax liability associated with the double-taxed income. The purpose of the credit is to prevent double taxation. Tax imposed is completely independent of tax paid. If tax paid was the measure of the credit, a taxpayer could arrange to completely eliminate his Delaware tax liability by merely overpaying estimated taxes to the other state, then subsequently applying for a refund of the overpaid amount.

Even if Petitioners were correct and credit were allowed for tax paid, it would then follow that any refund of the South Carolina tax received in 1992 would have to be paid to Delaware dollar-for-dollar since a credit was claimed from Delaware in the previous year for the full amount of tax withheld.

For the foregoing reasons, the Board finds in favor of the Respondent and denies the Petition.

SO ORDERED THIS NINTH DAY OF JULY, 1993 .

IT IS SO ORDERED.








