

TAX APPEAL BOARD OF THE STATE OF DELAWARE

EDWARD C. DEDRICK,)
)
 Petitioner,)
)
 v.) Docket No. 1664
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

BEFORE: Todd C. Schiltz, Esq., Chairman, Steven R. Director, Esq., Vice-Chairman, Joan M. Winters, CPA, and Sindy Rodriquez and Robert Slavin, Members

Edward C. Dedrick, *pro se*

Jennifer R. Noel, Esq., Deputy Attorney General, for Respondent

DECISION AND ORDER

Petitioner Edward C. Dedrick appeals from a December 8, 2015 notice of determination issued by the respondent Director of Revenue. The notice of determination rejected a credit for taxes paid to Maryland that Petitioner claimed on his 2014 Delaware Individual Non-Resident Income Tax Return. For the reason set forth below, the Board determines that Petitioner cannot claim a credit for taxes paid to Maryland on his 2014 Delaware individual nonresident tax return and that the notice of determination should be affirmed.

STATEMENT OF FACTS

In 2014, Petitioner was a resident of North East, Maryland. Petitioner was employed in multiple states throughout 2014 and derived income from multiple sources located both within and outside of Maryland. The wages Petitioner earned in Delaware as a result of his employment with the State of Delaware, Department of Transportation were his principal source of income in 2014. Delaware taxes were withheld from Petitioner's Department of Transportation wages.

As Petitioner was a resident of Maryland in 2014, he filed a Form 200-02, Delaware Individual Non-Resident Income Tax Return with the State of Delaware for 2014 (the "Nonresident Return"). On his Nonresident Return, the Petitioner claimed a credit of \$2,298 for income taxes that he paid to Maryland in 2014. The Nonresident Return sought a refund of \$1,206 from Delaware.

On or about September 1, 2015, Respondent issued a Personal Income Tax Advisory ("Notice of Assessment") to Petitioner rejecting the claimed credit for taxes paid to Maryland and adjusting the Nonresident Return accordingly. As a result of the adjustment, Petitioner was not due a refund and, in fact, owed Delaware \$42.

On or about September 2, 2015, Petitioner protested the Notice of Assessment. In pertinent part, his protest stated (typographical and grammatical errors in original):

I am not now, nor have I ever been, a resident of the State of Delaware. I do however, work for the State of Delaware your errant employees incorrectly changed my accurate return to reflect my higher Federal and Maryland income that resulted from my rental and second job (self-employed) incomes that were not and were in no way derived from sources in the State of Delaware. Despite the State of Delaware having no legal claim to any of the outside Delaware income for a NON-RESIDENT and Non-Resident Delaware tax return, your errant employees proceeded to access taxes from the State of Delaware and further to send me a bill and coercive to threatening letter instead of the \$1206 refund I am due. I have paid my Maryland State incomes Taxes in full for tax year 2014 and no part of my \$1206 Delaware Refund was claimed or otherwise used to offset the Maryland state tax liabilities. A copy of my Maryland return is attached

At your level you should be familiar with the laws and concepts of the United States and the State of Delaware, including “Double Jeopardy.” Although this concept seems to have eluded you as the United States District Court ruled against the State of Delaware for its illegal attempts to extract taxes by placing tax payers in Double Jeopardy circa June/July 2015. Your continued actions to extract double taxes from tax payers, including myself, are not legal. I understand you like income for the State of Delaware, and I too like income for myself and the State of Delaware (I also get paid from those revenues); however, the income must be legally obtained, including under Federal Law – which has precedence over all state laws including Delaware. The State of Delaware Non-Resident tax return form conforms to the Federal standard with the offset of taxes paid to other States. Now, since the State Tax Rate for the State of Delaware is higher than that of New Jersey and Pennsylvania – Delaware makes out well by usurping taxes from residents of those states working in Delaware. Maryland is a different story and the state tax rate is higher than Delaware – thus Maryland usurps the taxes from Delaware for Maryland residents provided the Maryland resident files accurate returns in both states including tax offsets for taxes paid. I will not knowingly or intentionally file an inaccurate return including offsets of taxes paid to different states. It is NOT LEGAL for the Delaware Division/Director of Revenue to violate the law and

collect taxes not due from anyone, nor deny proper tax offsets paid to other states, including Non-residents of Delaware. The legislators can change the tax rates so that Delaware taxes are higher for everyone; however, I suspect that they would soon be voted out of office or maybe even a recall election by their constituents.

I certainly hope that I too am not forced to go to the United States district court system to obtain my refund of \$1206 that am due. If forced to go to US District court to obtain my funds I will certainly ask for court costs, interest and treble damages among other claims beyond the refund amount I am due.

On December 8, 2015, the Respondent, acting through his Tax Conferee, issued a notice of determination in response to the protest (“Notice of Determination”). In pertinent part, the Notice of Determination stated that:

You were a full year resident of Maryland for the 2014 taxable year and you were employed in Delaware. The Division of Revenue denied your claim of a credit for tax paid to Maryland of \$2,298 because only full year or part-year Delaware residents may claim credit for taxes paid to another state. *See 30 Del. C. § 1111 and § 1125, see also Instructions to Delaware Nonresident Income Tax Return for line 44.* Your letter also stated that you did not claim any credit for tax paid to Delaware on your Maryland return. The instruction booklet for Maryland resident returns indicates on page 11, that a taxpayer may claim credit for tax paid to another state on line 25 of the return by attaching a copy of form 502CR and the other state return. Since you were a full year Maryland resident you should claim a credit for tax paid to Delaware on your Maryland return. If the return was already filed, you would have to amend the Maryland return. The Division of Revenue has correctly disallowed your claim for a credit for taxes paid to the State of Maryland.

Thereafter, Petitioner timely appealed the Notice of Determination. In his petition, the Petitioner sought “a redetermination of the disallowance of his claim for refund.”

THE PARTIES’ CONTENTIONS

The arguments advanced by the Petitioner were not always clear or well developed. The following is our best understanding of his contentions. The Petitioner contends that: (i) Delaware cannot tax a nonresident (Opening Brief at 2, 7-9; Reply Brief at 6);¹ (ii) Delaware is impermissibly subjecting him to a double tax (Opening Brief at 3; Reply Brief at 12); (iii) Delaware is improperly denying him a credit for taxes paid to other states (Opening Brief at 3, 10); (iv) Delaware is impermissibly discriminating against Petitioner (Opening Brief at 3, 9-10; Reply Brief at 7-9); and (v) Respondent is engaged in deceptive practices, fraud and larceny (Opening Brief at 3, 10-12; Reply Brief at 6-7, 10-12).

The Respondent contends that (i) a state may tax a nonresident on income earned within the borders of the state; (ii) under Delaware law, a Maryland resident who works in Delaware must pay income tax to Delaware on the income earned within the State of Delaware, (iii) under Delaware law, only individual residents can claim credits for taxes paid to other states; and (iv) a Maryland resident who

¹ Petitioner titled his opening brief “Introduction” and his reply brief “Petitioner’s Answering Brief.” For ease of reference, we refer to the “Introduction” as “Opening Brief” and “Petitioner’s Answering Brief” as “Reply Brief.”

earns income in and is taxed by Delaware is not subject to double taxation because the Maryland resident can claim a credit on his Maryland return for taxes paid to Delaware. (Respondent's Answering Brief at 4-10). The Respondent also disputes the Petitioner's contentions.

ANALYSIS

The issue before the Board is whether Petitioner, an individual nonresident taxpayer, may claim a credit for taxes he paid to Maryland, his state of residence, on the individual nonresident return he filed with Delaware for 2014. As the Delaware code related to the taxation of individual nonresidents does not permit such a credit, the Board concludes that Petitioner cannot claim such a credit and we affirm the Respondent's ruling in the Notice of Determination.

I. State Taxation of Nonresidents and Resident State Tax Credits

State tax codes generally designate certain taxpayers as residents and other taxpayers as nonresidents. Jeffrey L. Krasney, *State Income Taxation of Nonresident Professional Athletes*, 47 Tax Law. 395, 397 n.13 (1994); *see also* 30 Del. C. § 1103 and § 1104 (defining resident and nonresident). States typically tax all of a resident's income regardless of its source. *State Income Taxation*, 47 Tax Law. at 398 and 405; *see also Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 463 (1995) (noting "well-established principle of interstate . . . taxation . . . that a jurisdiction, such as Oklahoma, may tax *all* the income of its residents")

(emphasis in original). With regard to nonresidents, many states tax the income that nonresidents earn from sources located within their borders. *State Income Taxation*, 47 Tax Law. at 396 n. 7, 397 n. 13, 398-99 and 405; *see also Shaffer v. Carter*, 252 U.S. 37, 52, 57 (1920) (a state may tax income that nonresidents earn from sources located within the state); *Stephen v. State Tax Comm'n*, 245 A.2d 552, 554 (Del. 1968) (“[t]hat the State of Delaware has jurisdiction to impose a tax upon the income of non-residents from any [activities] carried on within its borders . . . was settled by the United State Supreme Court in *Shaffer v. Carter* . . .”).

Taxpayers engaged in income producing activities in multiple states typically are residents of one state and nonresidents of others² and face the prospect of being taxed multiple times: once by their resident state on all of their income and again by each nonresident state on the income earned in each nonresident state. To avoid such a result, “many states grant tax credits to their residents to offset taxes paid to other states.” *State Income Taxation*, 47 Tax Law. at 400. *See also* Jerome R. Hellerstein & Walter Hellerstein, *State Taxation* ¶ 20.04[1][a] (“The power of a state to tax residents on all of their income regardless of source, along with the power of a state to tax nonresidents on income from sources within the state, exposes a taxpayer to the risk of multiple taxation.” States

² We say “typically” because states define resident in many different ways, *State Income Taxation*, 47 Tax Law. at 397 n.13, and, as a result, it is possible, although unlikely, for a taxpayer to be a resident in more than one state.

avoid this result “by providing their residents with a credit for personal income taxes imposed by other states on income derived from sources within those states.”) (citations omitted).

II. Delaware Taxes Nonresident Individuals on Delaware Sourced Income

Title 30, Section 1121 of the Delaware Code imposes a tax on nonresident individual taxpayers to the extent such taxpayers earn income from sources located within Delaware.

A tax is hereby imposed for each taxable year on the taxable income of every nonresident individual of this State equal to the tax determined under § 1102 of this title as if such individual were a resident, reduced by the credit allowed under § 1110(b) of this title, and the difference, multiplied by a fraction, the numerator of which is such individual's modified Delaware source income and the denominator of which is such individual's Delaware adjusted gross income.

30 *Del. C.* § 1121. Under this provision, a nonresident individual with Delaware sourced income (i) is taxed in the same manner a Delaware resident is taxed, (ii) can reduce his tax liability by applying any applicable personal credits provided for in Section 1110(b) of Title 30, and (iii) must multiply the resulting tax liability by a fraction representing the proportion of the taxpayer's total income that is earned in Delaware, a mathematical process which ensures that the State of Delaware taxes the nonresident only on his or her Delaware sourced income.³

³ Neither the personal credits provided for in Section 1110(b) nor the fractional multiplier mandated by Section 1121 are at issue here. Consequently, they will not be discussed further.

III. Modifications, Deductions and Exemptions Available to Individual Residents and Nonresidents

With regard to the taxation of a Delaware individual resident (and an individual nonresident on his or her Delaware sourced income as a result of Section 1121), Section 1102 of Title 30 specifies the tax rates applicable to the taxpayer's "taxable income" and Section 1105 of Title 30 specifies how a taxpayer must calculate his or her Delaware "taxable income." Specifically, a taxpayer's Delaware taxable income is the taxpayer's "adjusted gross income as defined in the laws of the United States" less "the modifications . . . deductions and personal exemptions provided in the subchapter." 30 *Del. C.* § 1105.⁴

Potentially applicable modifications are listed in Title 30, Section 1106. Potentially applicable deductions are listed in Title 30, Section 1107 through 1109. Potentially applicable personal exemptions are listed in Title 30, Section 1110(a). Neither Section 1102 nor Sections 1105 through 1110(a) of Title 30 allow a taxpayer to reduce his or her taxable income based on taxes paid to another state or to claim a credit for taxes paid to another state.

⁴ As explained above, an individual nonresident's Delaware taxable income is further reduced by application of the fractional multiplier mandated by Section 1121, a step which ensures that only Delaware sourced income is taxed by Delaware.

IV. Delaware Allows Resident Individuals, but not Nonresident Individuals, to Claim a Credit for Taxes Paid to Other States

In order to avoid double taxation of Delaware individual residents who engage in income producing activities in multiple jurisdictions, Title 30, Section 1111 gives “resident individual” taxpayers, but not nonresident individual taxpayers, the right to claim “a credit against the tax otherwise due” to Delaware in an amount equal to “any income tax imposed . . . by another state . . . on income derived from sources therein which is also subject to tax under this chapter.” 30 *Del. C.* § 1111.⁵ A “credit” is not a modification, deduction or personal exemption and, as a result, it does not reduce an individual resident or nonresident taxpayer’s taxable income under Sections 1102 and 1105.⁶

This credit is given to Delaware individual resident taxpayers, who face the threat of double taxation on non-Delaware sourced income, but not to individual nonresidents. This is so because individual nonresidents are protected from double taxation by credits provided by the states in which they reside. *See State Taxation* ¶ 20.04[1][a] (“The power of a state to tax residents on all of their income

⁵ The language of Section 1111 makes clear that this credit is available to individual residents, but not individual nonresidents. *Compare* 30 *Del. C.* §§ 1111-1114 and 1117, all of which grant credits to “resident individual[s],” *with* 30 *Del. C.* § 1116, which grants a credit to “resident and nonresident individual[s].”

⁶ Modifications, deductions and personal exemptions are different than credits under Title 30. *Compare* 30 *Del. C.* §§ 1106-1110(a), all of which identify modifications, deductions or personal exemptions which reduce a taxpayer’s taxable income, *with* 30 *Del. C.* §§ 1110(b)-1117, all of which provide for credits which can be used to satisfy/offset the taxpayer’s tax liability that arises from the taxpayer’s taxable income.

regardless of source, along with the power of a state to tax nonresidents on income from sources within the state, exposes a taxpayer to the risk of multiple taxation.” States avoid this result “by providing their residents with a credit for personal income taxes imposed by other states on income derived from sources within those states.”) (citations omitted).

V. Maryland Gives its Individual Resident Taxpayers a Credit for Taxes Paid to Other States

Like Delaware, Maryland protects its individual resident taxpayers who engage in income producing activities in multiple states from multiple taxation. In pertinent part, Section 10-703 of the Maryland tax code provides that “a resident may claim a credit against the income tax” due to Maryland “for . . . tax on income paid to another state” Md. Code Tax-Gen. § 10-703.⁷

Thus, in order to avoid double taxation, Petitioner can amend the 2014 return he filed in Maryland, claim a credit for all or a portion of the taxes he paid to Delaware for 2014, and seek a refund from Maryland.

VI. Petitioner Cannot Claim a Credit for the Taxes he Paid to Maryland

For the reasons set forth above, Petitioner is not entitled to claim a credit on his Nonresident Return for taxes he paid to Maryland in 2014. To the contrary, he

⁷ The amount of the allowable credit is “the lesser of: (i) the amount of allowable tax on income that the resident paid to another state; or (ii) an amount that does not reduce the income tax to an amount less than would be payable if the income subjected to tax in the state were disregarded.” Md. Code Tax-Gen. § 10-703(c).

should be claiming a credit on his Maryland return for taxes he paid to Delaware in 2014. The Respondent did not err and we affirm the Notice of Determination.

In reaching this decision, we reject Petitioner's arguments that (i) Delaware cannot tax a nonresident; (ii) Delaware is impermissibly subjecting him to a double tax; (iii) Delaware is improperly denying him a credit for taxes paid to other states; and (iv) Delaware is impermissibly discriminating against Petitioner; provided, however, that to the extent these arguments raise facial or as applied constitutional challenges, this Board lacks jurisdiction over such disputes and makes no rulings as to such issues. *JLI Invest S.A. v. Gregor*, Dkt. No. 1652 (TAB January 18, 2017). Likewise, to the extent Petitioner contends that Delaware is engaged in deceptive practices, fraud and larceny, this Board lacks jurisdiction over these independent causes of action and makes no rulings as to these claims. *Id.* Any constitutional or tort based claims can be raised on appeal before the Superior Court. *See Greene v. Dept. of Servs. to Children, Youth and their Families*, 2009 WL 5176536 at *3 (Del. Super. Nov. 24, 2009) ("the Court will not remand this

matter to the [administrative agency] to consider the [as applied] constitutional due process issue. Instead, the Court [hearing the appeal from the administrative agency] will address [plaintiff's] constitutional claim *de novo*.”).

Carl C. Eitz

Jean M. Winter

Robert W. Slaw

Arthur Mitchell

SO ORDERED this 8th day of February, 2017.