

TAX APPEAL BOARD OF THE STATE OF DELAWARE

PETER B. ADAMS & JOANNA K. ADAMS,)
ADAMS,)
Petitioners,)
v.) Docket No. 1673
DIRECTOR OF REVENUE,)
Respondent.)

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

Peter B. and Joanna K. Adams, *pro se*, for Petitioners

Edward M. Black, Esq. and Elizabeth R. McFarlan, Esq. Deputy Attorneys General, for Respondent

DECISION AND ORDER

The question presented by this case is did the Director of Revenue (“Director”) err when she assessed petitioners Peter B. Adams and Joanna K. Adams (the “Taxpayers”) \$6,800 in Delaware personal income tax and \$238 in interest related to the Taxpayers’ 2014 personal income tax return. The Director made the assessment after determining the Taxpayers failed to substantiate itemized deductions claimed on their 2014 personal income tax return. The Taxpayers have not submitted evidence supporting the claimed itemized deductions and instead argue that they owe no taxes to Delaware because all of the

income at issue was earned in Maryland, not Delaware, and because they relied on tax preparation software, TurboTax®, to prepare their 2014 return.

For the reasons set forth below, the Board upholds the Director's assessment and determination. The Board further concludes that (i) the Taxpayers, as residents of Delaware, are required to pay taxes to Delaware on the income they earned in Maryland (while also being entitled to a credit for some or all of the taxes paid to Maryland on that income), and (ii) the Taxpayers' reliance on tax preparation software does not absolve them of their tax obligations.

The parties are directed to submit a form of order within 30 days detailing the amount of tax and interest the Taxpayers owe as of the date of this opinion, as well as a per diem calculation for each additional day the amounts due pursuant to the order remain unpaid.

Statement of Facts¹

The Taxpayers are residents of Delaware and have been at all times relevant to this proceeding. All of the income the Taxpayers earned in 2014 arose from activities in Maryland.

The Taxpayers' 2014 Delaware personal income tax return claimed almost \$124,000 in itemized deductions and a credit for taxes paid to Maryland. Among

¹ The facts set forth herein are derived from the parties' Stipulation of Facts and the documents referenced therein, including the Notice of Assessment and the Notice of Determination issued by the Director.

other things, the claimed itemized deductions included home mortgage interest, non-cash charitable gifts, a carry-over from a prior tax year of charitable contribution deductions and claimed unreimbursed employee business expenses. Notice of Determination at 1.

Upon review, the Director's auditor requested documentation supporting the claimed deductions and credit. The Taxpayers provided a copy of their 2014 Maryland income tax return to substantiate the taxes paid to Maryland, but no other documents. Notice of Determination at 1. The auditor allowed the claimed credit for taxes paid to Maryland, but denied all of the itemized deductions.² The

² Taxes paid to other states are not a deduction from taxable income. Rather, such tax payments are taken into account as a credit against taxes owed. As we explained in *Dedrick v. Director of Revenue*, Dkt. No. 1664, at 6-8 (Tax Appeal Board Decision and Order Feb. 8, 2017):

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 others, 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 avoid this result "by providing their residents with a credit for personal

auditor then applied the standard deduction, and determined the amount of taxes, \$6,800, and interest, \$238, then due. *Id.*

The Taxpayers timely protested the initial assessment and auditor determination. On January 29, 2016, the Director's tax conferee issued a notice of determination denying the protest. The Taxpayers then filed a timely appeal from that determination.

The Taxpayers have not submitted evidence to the Board supporting the itemized deductions they claimed on their 2014 return. Instead, the Taxpayers have argued that "they owe no taxes to Delaware because all of their income was earned in Maryland." SOF ¶ 9. The Taxpayers also contend "they utilized a seasoned tax preparation software to submit their [2014] tax return, namely Turbo Tax," and their use of this software demonstrates they owe no Delaware taxes for 2014. SOF ¶ 10.

Analysis

Delaware Residents Must Pay Delaware Taxes on Income Earned in any State

In pertinent part, Section 1105 of Title 30 of the Delaware Code provides that "The entire taxable income of a resident of this State shall be the federal adjusted gross income as defined in the laws of the United States" Thus,

income taxes imposed by other states on income derived from sources within those states.")
(citations omitted).

Delaware follows this approach. *See 30 Del. C. § 1111* (granting "resident individual" taxpayers the right to claim "a credit against the tax otherwise due" to Delaware in an amount equal to some or all of the "income tax imposed . . . by another state . . . on income derived from sources therein which is also subject to tax under this chapter.").

Delaware taxes a resident taxpayer's federal "adjusted gross income," as federal law defines that term.

The laws of the United States define "adjusted gross income" as "gross income minus" numerous deductions that do not apply in this case. 26 U.S.C. § 62. United States law defines gross income, in turn, as "all income from whatever source derived" 26 U.S.C. § 61.

Under this dual state-federal statutory scheme, a Delaware resident must pay taxes to Delaware on income earned in Delaware or any other jurisdiction. *See Lehman Bros Bank, FDB v. State Bank Com'r*, 2006 WL 3457649, at *6 (Del. Super. Nov. 30, 2006) ("For income tax purposes, ... a state can tax a person or entity domiciled in the state, even on income earned outside the jurisdiction ..."), *aff'd in part, rev'd in part on other grounds*, 937 A.2d 95 (Del. 2007); *State Income Taxation of Nonresident Professional Athletes*, 47 Tax Law. 395, 398, 405 (1994) (noting that states typically tax all of a resident's income regardless of its source).

Thus, as the Taxpayers are residents of Delaware, the express terms of clear statutes allow Delaware to tax all of the income the Taxpayers earned in 2014 even though all of that income arose from activities in Maryland, not Delaware.³

³ The Taxpayers are also required to pay taxes on their Maryland-sourced income to Maryland. As set forth above, pursuant to 30 *Del. C.* § 1111, the Taxpayers are entitled to use some or all of the taxes they pay to Maryland as a credit against the taxes they owe Delaware. Here, the auditor allowed a credit for taxes the Taxpayers paid to Maryland. The Taxpayers have not questioned the amount of the credit.

The Use of Tax Preparation Software Does Not Change the Result

Reliance on tax preparation software or expert tax advice does not absolve taxpayers of their obligation to pay the correct amount of taxes to taxing authorities. Thus, the fact that the Taxpayers utilized and relied on TurboTax® to prepare their 2014 Delaware income tax return does not eliminate the Taxpayers' obligation to substantiate their claimed deductions or pay taxes to Delaware as set forth above.

Conclusion

For the foregoing reasons, the Board upholds the Director's determinations and judgment is entered in her favor.

We order the Director to circulate a proposed form of order to the Taxpayers for review within fourteen (14) days of the date of this opinion. The proposed form of order shall detail the total tax and interest that the Taxpayers owe for 2014 as of the date of this opinion, as well as a per diem calculation for each additional day the amounts due pursuant to the order remain unpaid. Tax Appeal Board Rules 19(e) and 20. The parties shall file a joint proposed order for signature by the Board, or, if the parties are unable to agree on a form of order, separate proposed forms of order, within thirty (30) days of the date of this opinion. Tax Appeal Board Rule 20.



James W. ...

Robert W. Slavin

SO ORDERED this 13th day of February, 2019.