

TAX APPEAL BOARD OF THE STATE OF DELAWARE

GINNY GLICK and SEAN GLICK,)	
)	
Petitioners,)	
)	
v.)	Docket No. 1721
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

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

 Ginny and Sean Glick, *pro se*, for Petitioners

 Elizabeth R. McFarlan, Esq. Deputy Attorney General, for Respondent

DECISION AND ORDER

The question presented by this case is did the Director of Revenue (“Director”) err when she assessed petitioners Ginny and Sean Glick (the “Taxpayers”) \$5,677 in Delaware personal income tax for tax year 2015, \$6,597 in Delaware personal income tax for tax year 2016 and \$313 in Delaware personal income tax for tax year 2017. For the reasons set forth below, the Board upholds the Director’s assessments and enters judgment in favor of the Director.

Statement of Facts¹

From March 2012 until May 2017, the Taxpayers worked for the United States government and resided overseas. Prior to moving overseas, the Taxpayers advised the United States Department of State that their domicile was 79 Jury Drive, Magnolia, Delaware.

The Taxpayers admit that from January 2015 until May 2017, they were domiciled in Delaware. Stipulation of Facts ¶ 15. The Taxpayers did not establish a new domicile until they purchased a home in Virginia in August 2017. The Director admits that all of the income the Taxpayers earned from January 2015 until May 2017 was earned overseas.

From January 2015 until May 2017, the United States Department of State, the Taxpayers' employer, withheld taxes from the Taxpayers' paychecks. As the Taxpayers had identified Delaware as their domicile, the Department of State remitted the withholding taxes to the State of Delaware.

For the 2015, 2016 and 2017 tax years, the Taxpayers filed Delaware non-resident income tax returns seeking a refund of all withholdings taxes that the United States Department of State remitted to Delaware on behalf of the Taxpayers. The Taxpayers filed their returns in this manner based on advice they

¹ The facts set forth herein are derived from the parties' Stipulation of Facts and Statement of Positions of the Parties, dated October 9, 2018.

contend they received from an employee of the Delaware Division of Revenue in 2008.² The Taxpayers received refunds from Delaware in 2015 and 2016.

On January 5, 2018, the Division of Revenue issued two Notices of Assessment assessing taxes against the Taxpayers for 2015 and 2016. The Taxpayers protested the assessments, as well as their obligation to pay taxes to Delaware for 2017, arguing that they owe no taxes to Delaware because they were not residents of Delaware during this time, all of their income was earned overseas, and none of their income was earned in Delaware. The Taxpayers also argued that they relied on the advice of a Division of Revenue employee when preparing their taxes and determining what they owed, and, even if that advice was inaccurate, they reasonably relied on the advice and they should owe no taxes to Delaware for the period in question.

On May 17, 2018, the Division of Revenue issued a Notice of Proposed Assessment for the 2017 tax year seeking payment of taxes the Taxpayers purportedly owed on the income they earned from January to May 2017.

On May 21, 2018, the Division of Revenue issued a Notice of Determination denying the Taxpayers' protest. The Taxpayers filed a timely appeal with the

² The Taxpayers also contend that, at some point in time, they consulted with an independent tax professional and the tax professional confirmed that the Taxpayers were non-residents of Delaware. According to the Taxpayers, the tax professional further opined that because the Taxpayers were non-residents and because the Taxpayers did not earn any of their income in Delaware, the Taxpayers were entitled to a complete refund of all taxes paid to Delaware in 2015, 2016 and 2017.

Board seeking a declaration that they owe Delaware no taxes for 2015, 2016 or 2017.³

Analysis

Individuals Domiciled in Delaware Must Pay Delaware Taxes

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, Delaware taxes its “residents” and each resident must pay state taxes on his, her or its federal “adjusted gross income,” as federal law defines that term.

Section 1103(1) of Title 30 of the Delaware Code defines a resident of Delaware as an individual:

Who is domiciled in this State to the extent of the period of such domicile; provided, however, an individual who is present in a foreign country or countries for at least 495 full days in any consecutive 18-month period, and during such period of 18 consecutive months is not present in this State for more than 45 days, and does not maintain a permanent place of abode in this State at which the individual's spouse, children or parents are present for more than 45 days, and is not an employee of the United States, its agencies or instrumentalities (including members of the Armed Forces) shall not be considered a resident of this State during such period

³ The Division of Revenue initially sought to assess interest and penalties against the Taxpayers. At some point in the administrative process, the Division of Revenue removed the assessed interest and penalties.

30 *Del. C.* § 1103(1) (emphasis added).

Here, the Taxpayers admit that they were domiciled in Delaware in 2015, 2016 and from January to May 2017. Stipulation of Facts ¶ 15. As a result, they were Delaware residents during that time unless an exception applies. No exception applies because, although the Taxpayers appear to have been in foreign countries for 495 full days during the relevant 18-month time periods and not present in Delaware for 45 days during those periods, they were employees of the United States during those periods. As a result, the Taxpayers do not fall into the living abroad exception created by Section 1103(1).

Accordingly, the Board rejects the Taxpayers' contention that they were not residents of Delaware in 2015, 2016 or from January to May 2017.

Delaware Taxes All of a Resident's Income, Regardless of Source

As stated above, Delaware taxes its resident taxpayers' 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.

Thus, 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).

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 2015, 2016 and from January to May 2017, even though all of that income arose from activities outside of Delaware. Accordingly, the Board rejects the Taxpayers’ contention that they owe no taxes to Delaware because all of their income was earned overseas.

**Faulty Advice from Government Agents Does Not Bar
the Director from Enforcing the Tax Code**

The Taxpayers contend that “they relied on the advice of a Division [of Revenue] employee in determining they did not owe Delaware tax for all disputed time periods” and that “they should not be liable for any tax ... based on their reliance upon the Division’s inaccurate advice.” Stipulation of Facts ¶¶ 17-18.

“As a general rule ... the ‘state is not estopped in the exercise of its government functions by the acts of its officers.’” *Harmon v. State of Delaware, Delaware Harness Racing Commission*, 62 A.3d 1198, 1201 (Del. 2013) (citation

omitted).⁴ This principle applies even when a party takes action based on erroneous advice or information it receives from the state. *Richardson v. Board of Pension Trustees*, 2016 WL 6609554, at *1 (Del. Super. Nov. 7, 2016) (claim that plaintiff's pension benefits vested after 5 years of service was barred even though plaintiff changed jobs based on a state website that inaccurately stated that "a State employee became eligible for a service pension at age sixty-two after five years of credited State service"). See also *Burdett v. Comm'r*, T.C. Memo. 1992-576, 1992 WL 237257, at *3 (T.C.M. (CCH) Sept. 28, 1992) ("it is generally held that a misstatement of law by a Government agent, by itself, is not sufficient to support a claim of estoppel" against the government); *Henry v. United States*, 870 F.2d 634, 637 (Fed. Cir. 1989) (IRS agent's erroneous advice regarding time by which taxpayer could seek refund did not preclude IRS from raising statute of limitations as a defense to taxpayer's untimely refund claim).

Thus, the fact that the Taxpayers purportedly relied on inaccurate advice from a Division of Revenue employee does not bar the Director from seeking to collect the taxes that the Taxpayers owe to Delaware. Residents of Delaware are required to pay the taxes they owe to the state. Regardless of what the Taxpayers were told by a Division of Revenue employee, they were required to pay taxes to Delaware in 2015, 2016 and from January to May 2017. The Taxpayers suffered

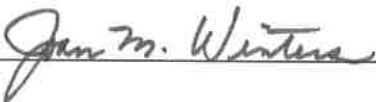
⁴ There is an exception to this general rule in the employment context, but this case does not concern employment and, therefore, the exception does not apply.

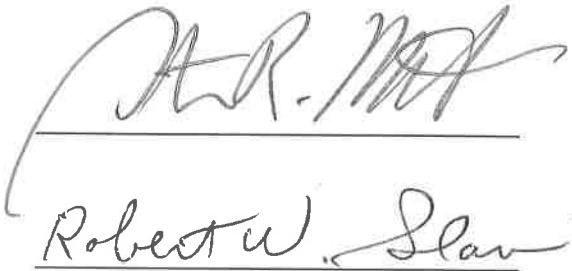
no prejudice by any reliance on the employee's faulty advice as the Director has withdrawn any request for penalty and interest in this case. All the Director is seeking is that the Taxpayers pay the taxes that they owe. The Director did not err by enforcing the Delaware tax code or seeking to collect the taxes that the Taxpayers owe to Delaware.⁵

Conclusion

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







SO ORDERED this 13th day of March, 2019.

⁵ Similarly, the Taxpayers' purported reliance on the advice of a tax professional does not relieve them of their obligations here. "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." *Adams v. Director of Revenue*, TAB Dkt. 1673, at 6 (Tax Appeal Board Decision and Order Feb. 13, 2019).