

THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

ARTHUR T. SHERMAN and)
ELIZABETH H. SHERMAN,)
)
Petitioners,)
)
v.) Docket No. 612
)
DIRECTOR OF REVENUE,)
)
Respondent)

Before: Joseph S. Yucht, Esquire, Vice-Chairman; Cyric W. Cain, Jr., Nettie C. Reilly, and Rhett Mc Griff, Members

Arthur T. Sherman and Elizabeth H. Sherman, Pro Se

John P. Fedele, Esquire, Assistant Attorney General for Respondent

DECISION AND ORDER

Joseph S. Yucht, Esquire, Vice-Chairman: The taxes in controversy are income taxes for the calendar year 1974. The petitioners were non-residents during the tax year in question and filed their return for said year and only included income earned within this State in computing the itemized deductions and personal exemptions pursuant to the provisions of 30 Del. C. §1126. Petitioners objected to having to include all income in the denominator of the fraction used to compute the amount of their itemized deductions and personal exemptions as per 30 Del. C. §1126, claiming that income earned outside of Delaware should not be used in calculating or computing the deductions or

exemptions or in any other way to determine the amount of Delaware income tax. Petitioners contended that if income earned outside of Delaware is used to compute any part of the Delaware Income tax, then the non-resident taxpayer is being taxed without representation and is denied due process of law. The respondent denied that petitioners were taxed without representation or denied due process.

The pertinent part of 30 Del. C. §1126 provides:

"If the amount of adjusted gross income a non-resident individual would be required to report under §1105 of this title if he were a resident exceeds, by more than \$100 the amount of adjusted gross income he receives from sources within this State, his itemized deductions and personal exemptions shall be limited by the percentage which his adjusted gross income from sources within this State is to the adjusted gross income he would be required to report if he were a resident..."

In the present matter, it is conceded that the income in question would be included in computing the adjusted gross income if petitioners had been a resident. The question then becomes whether the inclusion of income earned by a non-resident outside of this State in a calculation used to determine the amount of personal deductions and exemptions allowable is constitutional?

The Tax Appeal Board holds that said provision is constitutional and petitioners are not being taxed without representation nor denied due process. In this case, the amount of deductions and exemptions permitted

is to be calculated and taxed in the same proportion as the adjusted gross income from sources within Delaware bears to adjusted gross income from all sources. The calculation is a measuring stick or guide post for determining deductions and exemptions only and is not an item of income used to determine net taxable income. No tax is imposed on said income. Accordingly, Petitioners prayers are denied and Respondents income tax liability for the year 1974 has been affirmed.

IT IS SO ORDERED.

Joseph D. Yucht
Joseph W. Cain
Nettie C. Reilly
Rhett McGriff

April 14, 1976

SYNOPSIS

DOCKET NO. 612

TAX SEGMENT: PERSONAL INCOME TAX
 Apportionment of Income

ISSUE: Petitioners are nonresidents of the State of Delaware for the calendar year 1974. Petitioner objects to the inclusion of all income in the denominator to determine the fraction used to compute the amount of their itemized deductions and personal exemption per Section 1126 of 30 Del. C. Petitioner claims this method of computation is used the nonresident is being taxed without representation and is denied due process of law.

Section 1126 provides:

"If the amount of adjusted gross income a nonresident individual would be required to report under § 1105 of this title if he were a resident exceeds, by more than \$100 the amount of adjusted gross income he received from sources within this State, his itemized deductions and personal exemptions shall be limited by the percentage which his adjusted gross income from sources within this State is to the adjusted gross income he would be required to report if he were a resident...."

The income in question would be included in computing the adjusted gross income if petitioners had been residents. The question is whether the method used by the State is constitutional.

TAB DECISION: The Tax Appeal Board holds that the provisions of the tax law is constitutional and the method used by the State is correct. The amount allowed for deductions and exemptions is calculated and taxed in the same proportion as the adjusted gross income from sources within Delaware bears to adjusted gross income from all sources. This is a calculation for determining deductions and exemptions and not used to determine net taxable income. No tax is imposed on the income earned outside of Delaware.

DECISION: For Respondent

DECISION DATE: April 14, 1976