

TAX APPEAL BOARD OF THE STATE OF DELAWARE

REBECCA S. WELSH,)
)
 Petitioner,)
)
 v.) Docket No. 671
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

Before: Joseph S. Yucht, Esquire, Chairman; James C. Eberly, Sr., Esquire, Vice-Chairman; Cyric W. Cain, Jr., Nettie C. Reilly, and Harry B. Roberts, Jr., Members.

William B. Reynolds for Petitioner.

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

DECISION AND ORDER

Joseph S. Yucht, Esquire, Chairman: The facts in this case are not in dispute and were stipulated as follows:

1. Petitioner is a widow who resided in New Castle County, Delaware.
2. Petitioner's deceased husband, Richard A. Welsh, was employed by Delmarva Power & Light Company at the time of his death in 1974 and had earned pension benefits under the terms of the Delmarva Retirement Plan ("the Plan").
3. In 1976 Petitioner received survivor benefits income under the Plan in the amount of \$2,785.80.
4. Petitioner, in computing her 1976 Delaware Income Tax, deducted \$2,000.00 of the said \$2,785.80 from her federal adjusted gross income figure.
5. Petitioner treated the said \$2,000.00 as an exclusion pursuant to 30 Del. C. §1106(b)(3).

6. Respondent denied the said \$2,000.00 exclusion (deduction) pursuant to TAX NEWSGRAM 75-18 promulgated by the Director of Revenue on September 4, 1975.

7. On December 19, 1977 Respondent mailed a Notice of Assessment to Petitioner indicating that said deduction had been denied and as a result, additional tax in the amount of \$176.00 had been assessed, plus interest of \$14.08.

8. Petitioner subsequently appealed said assessment to this Board.

The issue is entirely one of statutory application and interpretation. 30 Del. C. §1106(b)(3) purports to exclude from Delaware taxable income:

"Amounts received as pensions from employers, the United States, the State or any subdivision thereof, not to exceed \$2,000.00."

Does this statute exclude the sum of \$2,000.00 in pension benefits that Rebecca S. Welsh received in 1976 from her deceased husband's employer? The Petitioner contends it does and the Respondent contends it does not. Accordingly, we must determine what the legislature intended when it enacted said statute.

The legislative history of the statute indicates the following:

a. That on or about January 22, 1975, House Bill No. 47 was introduced into the House of Representatives of the 128th General Assembly of the State of Delaware, proposing to amend Section 1106(b), Chapter 11, Title 30 of the Delaware Code by adding thereto a new paragraph to be designated as para-

graph (3).

b. On the bottom of the one page Bill was typed a "Synopsis" which set out an explanation of or purpose for which the Bill was enacted, which stated:

"It is the purpose of this Act that, on the Income Tax of a resident individual, persons receiving pensions should not be taxed on the first two thousand dollars (\$2,000.00) of such pensions."

c. The Bill was approved, as drafted, by a majority of the members elected to both the House of Representatives and the Senate and on July 11, 1975 was signed by the Governor. We must now determine from this history whether or not the Legislature intended said Act to apply to Petitioner.

In determining what the legislature intended, we need look no further than the Bill itself, since the draftsman spelled out the purpose of the Act in the Synopsis.

"When the purpose of an act is expressed in clear and unambiguous terms, this must be accepted as the solemn declaration of the sovereign, and taken as true unless incompatible with the meaning and effect of the statute."

82 C.J.S. Statutes, §323, p. 612.

Accordingly, a reading of said Synopsis clearly indicates that the purpose of the Act is to grant tax relief to persons receiving pensions and does not restrict the definition of said persons to the extent that the Respondent did in its said Tax Newsgram 75-18. By its express terms the statute grants broad tax relief by excluding from Delaware taxable income any amounts not exceeding \$2,000.00 received as pensions from stated sources. There is no

requirement that the recipient had to be an employee or former employee of the paying source as contended by Respondent. The interpretation placed on said statute by Respondent was clearly not intended by the Legislature. Tax statutes should not be construed so as to place a greater burden on a taxpayer than is expressly and clearly intended. State Farm Mut. Ins. Co. v. Short, 202 A. 2d 278, 41 Del. Ch. 591 (1964)

We conclude that the Legislature intended that the provisions of 30 Del. C. §1106(b)(3) apply to Petitioner as well as to any other resident individual receiving a pension from an employer, the United States, the State of Delaware or any subdivision of the State of Delaware. Thus the intent of the Legislature, as expressed in the Synopsis of the Bill at the time the Bill was being considered by said Legislature, is the controlling factor, as opposed to speculating what the Legislature intended. We hold, therefore, that the Respondent erred in denying Petitioner a deduction or exclusion of \$2,000.00 from her adjusted federal gross income figure, and in assessing Petitioner additional tax in the amount of \$176.00 plus interest of \$14.08. The decision of Respondent is reversed.

IT IS SO ORDERED.

Joseph S. Yucht
Edward C. Clift
Nettie C. Reilly
Sp. W. Gair
Harry B. Kuletzky

Dated: July 20, 1979

SYNOPSIS

DOCKET NO. 671

TAX SEGMENT: PERSONAL INCOME TAX
 Exclusion from gross income

ISSUE: The question is whether the petitioner could exclude from gross income the first \$2,000 of the pension received by her from her deceased husband's employer.

TAB DECISION: The Tax Appeal Board concluded that the intent of the Legislature in the provisions of 30 Del. C. § 1106 (b) (3) apply to petitioner as well as to any other resident individual receiving a pension from an employer, the United States, the State of Delaware or any sub-division of the State of Delaware. The Board, therefore, held that the Respondent erred in denying petitioner a deduction or exclusion of \$2,000 from her adjusted federal gross income and the assessment of additional taxes.

DECISION: For Petitioner

DECISION DATE: July 20, 1979