

BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

THOMAS E. MANERCHIA,)
)
 Petitioner,)
)
 v.) Docket No. 769
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

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

Edward J. Jones, C.P.A. for Petitioner
James P. McDonald, C.P.A. for Petitioner

John P. Fedele, Deputy Attorney General for Respondent

DECISION AND ORDER

Cyric W. Cain, Jr., Member: The facts, which have been stipulated by the parties, may be summarized as follows:

1. The Petitioner was a Delaware resident for the 1979 calendar year.
2. On September 5, 1979, Petitioner sold real estate located in New Jersey and from the sale thereon realized a long-term capital gain in the amount of \$54,406.
3. Petitioner was subject to New Jersey gross income tax on the entire gain and accordingly paid \$1,241. to the State of New Jersey

computed as follows:

$$2\frac{1}{2}\% \times \$54,406 = \$1,241$$

4. Likewise, Petitioner claimed credit for the \$1,241 on his 1979 Delaware income tax return.

5. On November 26, 1980, Respondent made an examination of Petitioner's Delaware return and in a Notice of Assessment dated December 10, 1980 disallowed the full credit of \$1,241. Instead a lesser amount was allowed in the amount of \$531. computed as follows:

a. Gain subject to New Jersey gross income tax but not subject to Delaware income tax: \$33,172.

b. Gain subject to New Jersey gross income tax and Delaware income tax: \$21,234.

c. Credit allowed for New Jersey gross income tax under 30 Del. C. § 1111 (a): $2\frac{1}{2}\% \times \$21,234. = \$531.$

The issue to be decided is proper interpretation of 30 Del. C. § 1111 and how it applies to income tax paid another state.

The pertinent chronology is as follows:

1. In 1979 taxpayer sold property in New Jersey paying $2\frac{1}{2}\%$ of the gain as required on the New Jersey gross income tax return.

2. As a Delaware resident the taxpayer filed a 1979 Delaware resident return including 40% of the gain after excluding the remaining 60% following Federal rules on a piggyback basis allowed in Delaware.

3. Result: $2\frac{1}{2}\%$ of the \$54,406. gain or \$1,241. was taken as a credit on taxpayer's 1979 Delaware resident return.

Respondent offers the following as a basis for his disagreement:

1. He contends that because 60% of the gain never enters into the income calculation in Delaware, just the 40% gain times $2\frac{1}{2}\%$ or 531. should be allowed as a credit.

2. Respondent contends further that that 60% is the so-called long-term capital gain deduction which is deducted from gross income under Sec. 1202 of the Internal Revenue Code. It simply never enters into Delaware taxable income.

We disagree with Respondent's reasons and think that 30 Del. C. § 1111 adequately applies in this case as filed by the Petitioner.

The ruling on the motions made by both sides it is pertinent to note that no cases have been found on this particular issue. It is a case of first impression and the Board thinks the Legislators worded Sec. 1111 with emphasis placed as outlined below:

Sec. 1111 says:

"A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on him for the taxable year by another state of the United States or the District of Columbia on income derived from sources therein and which is also subject to tax under this chapter." (underscoring denotes applied emphasis).

For the foregoing interpretation we hereby affirm the determination of the Petitioner.

IT IS SO ORDERED.

Joseph S. Yurt
James P. O'S
Nettie C. Reilly
Mary B. Roberts
April W. Cain

DATED: September 10, 1982

SYNOPSIS

DOCKET NO. 769

TAX SEGMENT: PERSONAL INCOME TAX

ISSUE: Whether or not credit is permitted of the full amount of taxes paid to the State of New Jersey realized on a long-term capital gain for Delaware tax purposes, or as contended by Respondent that only 40% is deductible since 60% never enters into taxable income.

TAB DECISION: The Tax Appeal Board interpreted that the legislative intent in the wording of 30 Del. C. § 1111 is emphasized that a credit be allowed of any income tax imposed on a resident individual by another state.

DECISION: For Petitioners

DECISION DATE: September 10, 1982

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Decision For Petitioner
Tax Board Affirmed

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DIRECTOR OF REVENUE, .
Appellant, .
Respondent Below, .

v. .

CIVIL ACTION NO.
82A-SE-12

THOMAS E. MANERCHIA, .
Docket No 769 Appellee, .
Petitioner Below. .

Submitted: January 24, 1983
Decided: May 19, 1983

Upon appeal from the Director of Revenue. Affirmed.

John P. Fedele, Esq., Deputy Attorney General, Department of Justice, Delaware, for Appellant, Respondent Below.

Robert E. Schlusser, Esq., Schlusser and Reiver, Wilmington, for Appellee, Petitioner Below.

O'HARA, J.

Action of Decision
Acquiescence
No Appeal
PRS

The instant appeal by the Director of Revenue ("Director") challenges the interpretation of the Tax Appeal Board ("Board") with respect to 30 Del. C. §1111(a). Allowing a credit for income tax paid to another State, the statute provides in relevant part:

(a) Allowance of credit - A resident individual shall be allowed a credit against the tax otherwise due under this Chapter for the amount of any income tax imposed on him for the taxable year by another State of the United States or the District of Columbia on income derived from sources therein and which is also subject to tax under this Chapter.

The controversy herein arises in the following context: Appellee-taxpayer ("taxpayer"), a Delaware resident, sold real estate located in New Jersey in 1979 and realized a gain therefrom of \$54,406.00. The taxpayer was subject to a New Jersey gross income tax of 2 1/2 percent on the entire gain, resulting in a New Jersey gross income tax liability of \$1,241.00. He then claimed a credit on his 1979 Delaware income tax return for the entire \$1,241.00 paid to New Jersey, purportedly pursuant to 30 Del. C. §1111(a). The Board upheld this amount as the appropriate Delaware credit, a ruling which the Director asserts is in error as a matter of law.

Initially, the Director points out that the "entire taxable income" subject to Delaware personal income tax is defined at 30 Del. C. §1105 as Federal adjusted gross income, as defined in the Internal Revenue Code of 1954 ("I.R.C. 1954") with the modifications, deductions and exemptions as provided for in 30 Del. C., Chapter 11.

The Federal adjusted gross income computation subtracts certain deductible items from gross income, including long-term capital gains. See Section 62, I.R.C. 1954. The amount of the gain subject to exclusion is governed by Section 1202(a), I.R.C. 1954, providing as follows:

(a) In General - If for any taxable year a taxpayer other than a corporation has a net capital gain, 60% of the amount of the net capital gain shall be a deduction from gross income.

Therefore, inasmuch as 60 percent or \$32,643.60 of the long-term capital gain of \$54,406.00 is not included in the Federal adjusted gross income, it is not subject to Delaware personal income tax. See 30 Del. C. §1105. The remaining 40 percent (\$21,762.40) of the gain, however, is subject to the Delaware tax due to its inclusion as Federal adjusted gross income and, therefore, argues the Director, any New Jersey tax paid on that portion alone should be credited on the Delaware return.

However, the literal reading of 30 Del. C. §1111(a) which underlied the Board's construction of the statute obviates the need for such a complex and restrictive approach as that advanced by the Director. Specifically, this Court finds reference to the Federal income tax law unnecessary insofar as the operative elements of the Delaware credit are articulated in the statute:

A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on him for the taxable year by another state of the United States or the District of Columbia on income derived from sources therein and which is also subject to tax under this chapter.
(Emphasis added).

In short, the Delaware credit attaches to any income tax imposed on a resident individual by another state on income derived from sources therein. Unlike 30 Del. C. §1111(b)¹ which refers to "taxable income," the income described in §1111(a) is limited by no such qualification. The description of §1111(a) that the income "also be subject to tax under this chapter" merely requires that the income-generating transaction, in this case the sale of real estate yielding a long-term capital gain, likewise be subject to taxation generally in this State.

The Director's position strains to limit the credit by the ratio of the taxpayer's Delaware taxable income to the taxpayer's New Jersey taxable income, thereby implementing a limitation neither authorized nor contemplated by §1111(a). The sole restriction on the credit is defined by §1111(b) which imposes a limitation on the credit for taxes paid to another state to the extent that the rate of taxation in the other state exceeds the rate of taxation in Delaware.

In particular, §1111(b) states that the limitation on the credit is to be determined by the ratio of the taxpayer's Delaware taxable income derived from sources in other states to

¹That subsection provides:

(b) Limitation on credit. -- The credit allowable under this section with respect to the income tax imposed upon the taxpayer for the taxable year by each other taxing jurisdiction shall not exceed the amount computed by multiplying the tax otherwise due under this chapter by a fraction, the numerator of which is the amount of the taxpayer's taxable income derived from sources in the other taxing jurisdiction (applying the rules of section 1122 of this title), and the denominator of which is his entire taxable income. (Emphasis added).

The taxpayer asserts that the fact that subsection (a) speaks of "income," while subsection (b) speaks of "taxable income", indicates that the omission of the qualifier "taxable" from subsection (a) was intentional.

the taxpayer's total Delaware taxable income.² Accordingly, regardless of any reduction in the total gain made in determining Delaware taxable income, once the item enters into Delaware taxable income to any extent it is fixed for purposes of limitation on the credit.³

Moreover, this approach eliminates the need for inquiry into the nature of income being taxed outside this State and its concomitant relation to Federal adjusted gross income, as would be mandated under the Director's analysis, which would likewise yield varying percentages of tax paid to another state allowed to be claimed under 30 Del. C. §1111(a) based on the classification of said income. Our statute does not require such an inquiry.

Therefore, based on the foregoing examination of 30 Del. C. §1111(a), this Court concludes that the Board was correct as a matter of law in allowing the taxpayer a credit for the entire amount of tax paid to New Jersey on income realized from the sale of real estate situated therein. Accordingly, the Board's decision is affirmed.

IT IS SO ORDERED.

²Note that in subsection (a) there can only be uniformity of "income" between states, whereas subsection (b) deals with only one State, Delaware, and thus there can be uniformity of "taxable income."

³This becomes obvious through the simple example of a taxpayer whose only Delaware income was the sale of a piece of real property in New Jersey at a gain of \$100,000. Whether that gain is reduced to \$40,000 (by 60%) or to \$1 (by 99.9%) or whether that gain is not reduced at all, it is still going to be 100% of his Delaware taxable income, and he will be allowed a full credit for the New Jersey tax paid.