



TAX APPEAL BOARD OF THE STATE OF DELAWARE

ROBERT W. and PHYLLIS M. )  
 WYNN, )  
                   Petitioners, )  
                   v. ) Docket No. 771  
 DIRECTOR OF REVENUE, )  
                   Respondent. )

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

Robert W. Wynn and Phyllis M. Wynn, pro se

John R. Ferrick, Esquire, Deputy Attorney General for Respondent.

DECISION AND ORDER

Joseph S. Yucht, Esquire, Chairman: The facts presented to the Tax Appeal Board (Board) were stipulated and agreed to, as follows:

1. Petitioners, Robert W. Wynn and Phyllis M. Wynn are husband and wife and resided at 15 Indian Field Road, Wilmington, Delaware during the entire 1980 calendar year.
2. Petitioners filed a resident income tax return on a cash basis for 1980.
3. During 1980, Mr. Wynn had \$290.95 erroneously withheld from his pay for Pennsylvania income taxes. These taxes were withheld based upon his employer's belief that he worked at the company's Pennsylvania location when in fact he worked at the company's Delaware location.

4. On Petitioner's 1980 Delaware income tax return, Petitioner took a credit under 30 Del. C. §1111 for the \$290.95, the amount erroneously withheld from Mr. Wynn's pay for Pennsylvania income taxes.

5. The Division of Revenue, utilizing a copy of the State of Pennsylvania income tax return filed by Petitioners, permitted a credit against the Delaware income tax for the actual amount of tax liability shown on the return which was \$0 for Pennsylvania.

6. (Petitioners also originally contended they were entitled to a credit for the additional sum of \$208.80, said sum being an amount paid to the State of California during 1980 for 1979 and 1980 State of California income taxes. This contention was withdrawn from the case by Petitioners during oral argument.)

The parties further stipulated that the issue for the Board to decide was whether or not the credit permitted under 30 Del. C. §1111 is the amount of taxes paid and/or withheld during the calendar year, or is it the actual final tax liability of the taxpayer for the calendar year that may be taken as a credit.

The pertinent statutory provision, 30 Delaware Code §1111, reads as follows:

"1111. Credit for Income Tax Paid to Another State.  
(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."  
(Emphasis added)

The Board must apply this statute to the facts. The Superior Court has spelled out the guide posts we must use in the process, as follows:

"In determining the proper application of this statute to the facts at bar, several well established canons of statutory construction must be noted. First, when statutes are clear and unambiguous on their face, they must be applied in a way that is consistent with their ordinary meaning; in the absence of ambiguity, there is no need for judicial interpretation. A & P Stores v. Hannigan, Del.Supr., 367 A.2d 641 (1976); Balma v. Tidewater Oil Company, Del.Supr., 214 A.2d 560 (1965). Secondly, statutes relating to taxation and the collection of taxes must be strictly construed; no legislative intent will be implied beyond the clear meaning of the express language found in the provision. Wilmington Trust Company v. Caratello, Del.Super., 385 A.2d 1131 (1978); State Farm Mutual Automobile Insurance Company v. Short, Del.Ch., 202 A.2d 278 (1964). Further where tax statutes are not clear and unambiguous, the rule of construction to be applied depends upon the type of statute involved. If the statute imposes a tax, any doubts are to be resolved in favor of the taxpayer and against the government. Gould v. Gould, 245 U.S. 151 (1917). However, if the statute provides for an exemption from taxation, any doubts are to be resolved in favor of the government and against the claimed exemption. Mayor and Council of Wilmington v. Riverview Cemetery Company of Wilmington, Del.Super., 190 A. 111 (1937); 3 Sutherland, Statutory Construction, §66.09 (4th ed. 1974, as revised by C.D. Sands)." J.W. Shockley & Sons, Inc. v. Director of Revenue, C.A. No. 81A-JN-3, unreported opinion of Judge Bifferato dated March 17, 1982.

The Board, in applying these principles concludes that the key word in said statute is the word "imposed". Did the State of Pennsylvania impose any tax on Petitioners? The answer to this question we have determined is No.

The Petitioners have argued that since the tax was withheld,

and they were denied the use of the funds for a period of time, they should have the benefit of the credit. That is not what the legislature intended when it used the language in said §1111. No tax liability was incurred to the State of Pennsylvania for the year 1980, so no tax was imposed. The fact that Petitioners were denied the use of said funds was due to the error of Petitioner's employer and not to anyone else.

There is another argument in support of Respondent's position. The statute in its present form became effective on January 1, 1971. 57 Del. Laws Chapter 737. This Act amended the prior provisions which said in pertinent part:

"There shall be a credit against the tax paid under this Chapter for any income taxes paid to any state other than Delaware..."  
30 Del. C. §1120. (Emphasis added)

Since the legislature clearly demonstrated a desire to change the basis for the applicability of the credit, to requiring another state to impose a tax and when in fact no tax was imposed, no credit can result. The obvious purpose of the statute is to prevent a double tax to the taxpayer and since the State of Pennsylvania has not imposed any tax, no such double taxation can result.

For the foregoing reasons we conclude and hold that Petitioners may not take a credit of the sum of \$290.95 on their Delaware 1980 income tax return and that the Director of Revenue's assessment is

deemed to be correct.

IT IS SO ORDERED.

Joyce J. Galt  
James C. S. S. S.  
Nettie C. Beilly  
Harvey B. K. K. K.  
Agnes W. C. C. C.

Dated: September 10, 1982

SYNOPSIS

DOCKET NO. 771

TAX SEGMENT: PERSONAL INCOME TAX

ISSUE: Whether or not credit permitted under 30 Del. C. § 1111 is the amount of taxes paid and/or withheld during the calendar year of is it the actual final tax liability of the taxpayer for the calendar year that may be taken as a credit.

TAB DECISION: The Tax Appeal Board held that no tax was imposed pursuant to 30 Del. C. § 1111 by the State of Pennsylvania and therefore no credit can result.

DECISION: For Respondent

DECISION DATE: September 10, 1982