

BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

DONALD G. & MARY D. GIES,)
)
 Petitioners,)
)
 v.) Docket No. 782
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

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

Donald G. Gies, pro se
John P. Fedele, Esquire, Deputy Attorney General for Respondent

DECISION AND ORDER

Cyric W. Cain, Jr., Member: The facts which have been stipulated heretofore by both parties are summarized as follows:

1. Petitioners are individuals who reside in the State of Delaware.
2. The tax year in question is 1981.
3. Petitioners paid Philadelphia Wage Tax in the amount of \$1,129.24 and Pennsylvania Income Tax in the amount of \$576.08.
4. Petitioners claim the Philadelphia Wage Tax was reported on the W-2 form as a local income tax along with the State of Pennsylvania Income Tax, and; therefore, should be treated as an income tax and not as a municipal tax.
5. Petitioners, on their 1981 Delaware Income Tax, claimed credit in the amount of \$1,092.89 (based on pro rata of income

between Delaware and Pennsylvania).

6. Respondent allows the credit; but only to the extent of \$576.08 the actual amount Petitioners paid to the State of Pennsylvania.

7. Respondent in turn allows Petitioners a deduction for \$1,129.24 representing the City of Philadelphia Wage Tax.

The issue to be decided, therefore, is whether Petitioners are entitled to claim as a credit against Delaware Tax, taxes paid to the City of Philadelphia.

Petitioners in their opening brief, claim the Philadelphia Wage Tax is reported on the W-2 form as a local income tax along with the State of Pennsylvania Income Tax and; therefore, should be treated as an income tax, not as a municipal tax, and full credit be allowed for taxes paid.

Petitioners claim under the "Fairness Doctrine" that tax on wages once paid should not have to be paid again, regardless of political boundaries. Therefore, the Tax Appeal Board of the State of Delaware should use its good office to waive the additional taxes and penalties claimed by the State of Delaware against the Petitioners.

Petitioners request the Tax Appeal Board of the State of Delaware and the responsible tax writing committees of the State of Delaware to negotiate a reciprocal tax agreement between the State of Pennsylvania, the City of Philadelphia and the State of Delaware to bring about fair taxation of the wages of their citizens

in the respective states and associated municipalities. Such an agreement has been negotiated between the State of Pennsylvania, the City of Philadelphia and the State of New Jersey.

We disagree with the Petitioners in their opening brief statements. We do not think that the Philadelphia Wage Tax has equal status with the Pennsylvania Income Tax. Instead, we think that the Respondent in citing 30 Del. C., par. 1111 for taxes paid to another state is applicable in this case and rule accordingly.

"Section 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 from sources therein and which is also subject to tax under this chapter."

No penalty was assessed and we uphold this fact.

In conclusion, we are sympathetic with the Petitioners, however, the Tax Appeal Board has no jurisdiction or authorization to grant relief other than to determine whether Petitioners are entitled to claim as a credit against Delaware Tax, taxes paid to the City of Philadelphia.

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

IT IS SO ORDERED.

Cyril W. Cain
Joseph S. Gucht
James P. Galt
Arthur C. Kelly
Mary B. Roberts

Date: 12/9/83