TAX APPEAL BOARD OF THE STATE OF DELAWARE

JOHN S. and MARY C. BURPULIS,	:	
Petitioners,	:	Docket No. 806
v.	:	
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. Roberts, Jr., Members

Mark H. Goldman, C.P.A. of Corcoran & Goldman, P.A. for Petitioners.

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

DECISION AND ORDER

Joseph S. Yucht, Esquire, Chairman: Petitioners are husband and wife and are Delaware residents. For tax year 1982 they filed a joint Federal Income Tax Return and combined separate Delaware Income Tax Returns. Petitioner Mary C. Burpulis on her Delaware Tax Return claimed a deduction for two-earner married couples in the amount of $913.00, and requested a tax refund of $31.00. Respondent disallowed the deduction and assessed an income tax deficiency in the amount of $46.00 plus interest of $1.38. Petitioner then filed a timely appeal to this Board.

The sole issue for the Board to decide is whether Petitioner Mary C. Burpulis is entitled to the claimed deduction for two-earner married couples in the amount of $913.00 for the calendar year 1982. Since the parties have stipulated the facts, they are not

in dispute.

The filing of a joint Federal Income Tax Return by a husband and wife is permissible under Federal law (§6013(a) of the Internal Revenue Code of 1954). The Delaware return was filed pursuant to the provisions of 30 Del. C. §1162(2) which allows taxpayers who file a joint Federal return to file separate Delaware returns. The deduction claimed by Petitioners became effective for taxable years beginning after December 31, 1981 pursuant to Section 221 of the Internal Revenue Code of 1954. Said Section, in relevant part, provides as follows:

> "(a) DEDUCTION ALLOWED
> (1) IN GENERAL - in the case of a joint return under §6013 for the taxable year, there shall be allowed as a deduction an amount equal to 10% of the lessor of -
> (A) $30,000 or
> (B) The qualified earned income of the spouse with the lower qualified earned income for such taxable year."

The deduction is an amount equal to 5% in 1982, 10% in 1983 and thereafter, of the lessor of (a) $30,000 or (b) the amount of the lower spouse's qualified income.

Pursuant to the aforesaid provision of §221, Petitioners filed their 1982 joint Federal Income Tax Return and calculated that this section gave rise to a $913.00 deduction. (See Schedule W attached to the Stipulation of Facts). This deduction reduces the adjusted gross income of the Petitioners on their joint Federal Tax Return.

When the Petitioners filed their Delaware Tax Return for 1982, Petitioner Mary C. Burpulis claimed the §221 deduction in the amount of $913.00 in calculating her adjusted gross income. Petitioners contend that 30 Del. C. §1105 permits this. 30 Del. C. §1105 provides:

"§1105. Taxable Income
The entire taxable income of a resident of this State shall be his federal adjusted gross income as defined in the Laws of the United States with the modifications and less the deductions and personal exemptions provided in this subchapter."

Petitioners argue that because of this "piggy-back" nature of Delaware income tax law, this deduction is permissible since Federal law permits it to be deducted before arriving at adjusted gross income. In addition, there are no specific modifications listed in 30 Del. C. §1106(a) which would cause this deduction to be added back to federal adjusted gross income.

The Respondent contends that the §221 deduction for two-earner married couples should not be allowed on the Delaware Tax Returns if separate or combined separate Delaware returns are filed. This position is based on Division of Revenue Tax Ruling 82-1, dated June 7, 1982. This Tax Ruling, in relevant part, provides:

"3. Deduction for Two-Earner Married Couples

. . . . . .

Under Delaware law there is only one tax rate schedule applicable to all taxpayers, whether married or single. Hence, the "marriage tax penalty" that frequently results under Federal law in the case of two-earner married couples filing joint returns does not occur under Delaware law. Since Federal adjusted gross income is the starting point for computing Delaware adjusted gross income, in the case of married taxpayers who file a joint Federal return and also file a joint Delaware return, the new deduction for two-earner married couples will automatically carry over and be recognized for Delaware purposes. However, if a two-earner married couple files a joint Federal return claiming the new deduction, and then elects to file separate

> Delaware returns, the deduction claimed on the Federal return will not carry over to the Delaware return. The reason for this is that under long-standing administrative policy and practice, where taxpayers elect to file separate Delaware returns, the Federal adjusted gross income of each spouse, and the deductions attributable to each, must be determined as if they had filed separate Federal returns in arriving at Federal adjusted gross income. Accordingly, since the new deduction for two-earner married couples could not be claimed by the lower earning spouse under Federal law if a separate return was filed, such deduction will not carry over to the separate return of the taxpayer for Delaware purposes."

In addition to this Tax Ruling the Instructions for Delaware Personal Income Tax Returns, prepared by the Respondent, have stated that if taxpayers are filing combined separate returns, the deductions must be allocated to the wife and the husband in the same manner as if they had filed separate Federal returns. (See Instructions for the Years 1972 through 1982 filed with the Stipulation of Facts.) Respondent contends that these Instructions carry the weight of Regulations, citing Decision of the Tax Appeal Board, Docket Nos. 515, 515A and 515B Delaware State Reporter, Paragraph 200-258. In addition, said Tax Ruling 82-1 is deemed to be a Regulation promulgated by Respondent pursuant to 30 Del. C. §354 and §1223(a) and must be given great weight in determining the operation of a statute. Respondent further contends that if the Board adopts Petitioners' contention, married people would receive a bonus because they are married.

The Petitioners contend that if married couples receive an unintended benefit, they are entitled to it until the General Assembly acts to change the situation. To date the General Assembly has not

acted, so they are entitled to said benefit.

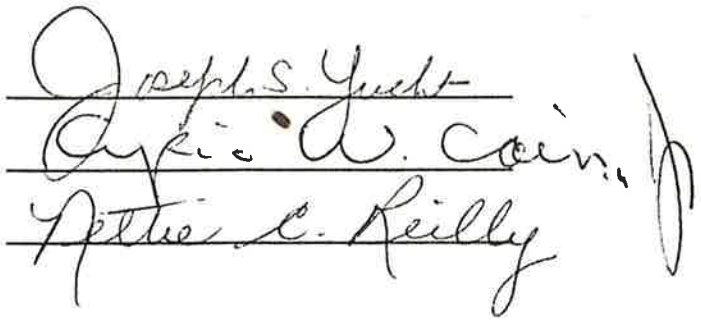
Based on the foregoing facts, contentions and law, the Board concludes that the same reasoning that we used in the cases of the Estate of Richard P. Fox and Jacqueline D. Fox v. Director of Revenue, Docket Nos. 573 and 574 is applicable to this case. In the Fox cases we said:

> "It is the view of the Board that when the General Assembly adopted the language of 30 Del. C. §1105, defining taxable income, said General Assembly was aware of the possibility that certain distributions may be made and the effort would be that said income may not be taxable. The language is clear in the statutes that it is the federal adjusted gross income (30 Del. C. §1105) that is controlling and if income is not so includable in the federal tax law, then it will not be so includable in said State law. There is nothing unconstitutional or unreasonable about such a decision and if a loophole exists it is for the General Assembly to correct. An apparent dificiency, loophole or deficit in the law cannot be remedied by a regulation enacted by the Division of Revenue."

Accordingly, if the State of Delaware did not want married taxpayers who file a joint Federal return and claim the §221 deduction to file separate Delaware returns and also claim the deduction, then it is for the General Assembly to so proclaim. Since the General Assembly did not act, the Respondent does not have the authority to issue Regulations or Instructions which contravene the statutes.

The deficiency assessment of the Respondent in the amount of $46.00 plus interest of $1.38 is reversed and the Respondent is directed to grant Petitioners their computed refund.

IT IS SO ORDERED.



Dated: December 9, 1983

(James C. Eberly, Sr., Esq., Vice-Chairman and Harry B. Roberts, Jr., Member, did not participate in this case.)

SYNOPSIS

DOCKET NO. 806

TAX SEGMENT: PERSONAL INCOME TAX

ISSUE: Whether or not Petitioners are entitled to claim deduction for two-earner married couples (Federal Law §221) filing joint Federal return pursuant to Federal Laws §6013 and who have elected to file separate combined Delaware returns pursuant to 30 Del. C., §1162 (2) in determining taxable income.

TAB DECISION: The Tax Appeal Board held that the language of 30 Del. C., §1105 defining taxable income as adopted by the General Assembly is clear and therefore controlling. The Board concluded that if the State of Delaware did not want married taxpayers who file joint Federal returns to claim the §221 deduction when filing separate Delaware returns that it is the General Assembly to so proclaim.

DECISION: For Petitioners

DECISION DATE: December 9, 1983

ED NOTE: Appealed to Superior Court NCC (C.A. No. 83A-DE-18) TAB decision reversed. Court decision decided 4/17/84.

Appealed to Supreme Court, No. 106, 1984 - Court affirmed judgement of Superior Court by Order dated 12/4/84 and Opinion dated 6/26/85.

Docket No. 806

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SUPERIOR COURT
OF THE
STATE OF DELAWARE

VINCENT A. BIFFERATO
JUDGE

Submitted: March 27, 1984
Decided: April 17, 1984

COURT HOUSE
WILMINGTON, DE. 19801

Re: Director of Revenue v.
John S. and Mary S. Burpulis
C. A. No. 83A-DE-18

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Deputy Attorney General
State Department of Justice
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Gentlemen:

This is an appeal from a decision of the Tax Appeal Board disallowing a notice of assessment directed to the appellees, John and Mary Burpulis.

The facts underlying this matter are not in dispute. The appellees filed a combined separate Delaware State return for the taxable year 1982; however, they had filed a joint Federal income tax return for the same taxable year. As part of their joint Federal return, appellees claimed the deduction for two-earner married couples as an adjustment to their income, pursuant to § 221(a)(1) I.R.C. On their State return John Burpulis claimed all itemized deductions, while Mary Burpulis reduced her gross income by the amount of the deduction taken by the couple pursuant to § 221(a)(1) on their Federal return. The appellant mailed a notice of assessment to the appellees disallowing the § 221(a)(1) adjustment to Mary Burpulis' income. Subsequently, the Tax Appeal Board disallowed the notice stating:

> "Based on the foregoing facts, contentions and law, the Board concludes that the same reasoning that we used in the cases of the Estate of Richard P. Fox and Jacqueline D. Fox v. Director of Revenue, Docket Nos. 573 and 574 is applicable to this case. In the Fox cases we said:

> 'It is the view of the Board that when the General Assembly adopted the language of 30 Del.C. § 1105, defining taxable income, said General Assembly was aware of the possibility that certain distributions may be made and the effort would be that said income may not be taxable. The language is clear in the statutes that it is the federal adjusted gross income (30 Del.C. § 1105) that is controlling and if income is not so includable in the federal tax law, then it will not be so includable in said State law. There is nothing unconstitutional or unreasonable about such a decision and if a loophole exists it is for General Assembly to correct. An apparent dificiency [sic], loophole or deficit in the law cannot be remedied by a regulation enacted by the Division of Revenue.'
>
> "Accordingly, if the State of Delaware did not want married taxpayers who file a joint Federal return and claim the § 221 deduction to file separate Delaware returns and also claim the deduction, then it is for the General Assembly to so proclaim. Since the General Assembly did not act, the Respondent does not have the authority to issue Regulations or Instructions which contravene the statutes."

The appellant's principal argument is that the taxpayers violated a Division of Revenue Ruling 82-1(3) requiring married couples filing combined separate returns to add back the Federal deduction for married couples. Appellant further argues that the General Assembly has empowered the Division of Revenue to promulgate such regulations, 30 Del.C. § 354 and § 1223, and that these regulations have the force and effect of law. 2 Am.Jur.2d Administrative Law § 292 (1973); citing Public Utilities Commission v. U.S., 355 U.S. 534 (1958); Atchison, T. & S.F.R. Co. v. Scarlett, 300 U.S. 471 (1937); U.S. v. Michigan Portland Cement, 270 U.S. 521 (1926).

The appellees' response directs the Court to 30 Del.C. § 1105 which states in part: "The entire taxable income of a resident of this State shall be his Federal adjusted gross income

as defined in the laws of the United States." They go on to argue that since this marital deduction was a component of Mrs. Burpulis' Federal adjusted gross income, it was proper for her to claim it on her State return. Furthermore, they argue that any modification to 30 Del.C. § 1105 must be through legislative enactment.

As a matter of law, this Court disagrees with the Board's holding that any deficiency, loophole, or deficit cannot be remedied by a Division of Revenue regulation. See Estate of Richard P. Fox and Jacqueline D. Fox v. Director of Revenue, T.A.B. (CCH), No. 573 and 574, ¶ 200-279. The General Assembly has specifically empowered the Secretary of Finance with the authority to promulgate rules, regulations and decisions regarding taxation of Delaware residents. The only limitation on this power is the requirement that these regulations, etc., not be inconsistent with tax laws codified in Title 30 of the Delaware Code Annotated. 30 Del.C. § 354.

The issue then becomes whether Division of Revenue Ruling 82-1(3) is inconsistent with Title 30.

It is the opinion of the Court that the Division of Revenue Ruling 82-1(3) is not inconsistent with Title 30 of the Delaware Code Annotated. As previously stated, the entire taxable income of a Delaware resident is his Federal adjusted gross income as defined by the laws of the United States. 30 Del.C. § 1105. In the case of a married couple filing a joint Federal return, there is no calculation of each individual spouse's Federal adjusted gross income, but rather a calculation of the Federal adjusted gross income for a separate taxable unit, the marital unit. Taft v. Helvering, 311 U.S. 195 (1940). See also I.R.C. § 6013(d)(3). Therefore, when a married couple filing a joint Federal return decides to file a combined separate State return pursuant to 30 Del.C. § 1162(2), each individual taxpayer must recompute his or her Federal adjusted gross income as defined by the laws of the United States and the Delaware Code. This, in itself, precludes either husband or wife from claiming the marital deduction provided by § 211 I.R.C. of 1954. Accordingly, Division of Revenue Regulation 82-1(3) is consistent with Title 30.

For the reasons stated herein, the decision of the Tax Appeal Board is REVERSED. IT IS SO ORDERED.

Very truly yours,

VAB:g

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BY Beverly J Evans

Docket No. 806

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN S. and MARY BURPULIS, Appellees-Below, Appellants, v. DIRECTOR OF REVENUE, Appellant-Below, Appellee.	§ § § § § § § § § § §	No. 106, 1984

Before HERRMANN, Chief Justice, McNEILLY and HORSEY, Justices.

O R D E R

This 4th day of December, 1984,

It appearing to the Court, after due consideration of the record and the contentions of the parties in this case, that:

(1) The Appellee, Director of Revenue, is confronted with certain exigencies in the performance of the regular duties of the Division of Revenue regarding the preparation and mailing of tax forms and instructions at this time of the year.

(2) Under the circumstances, it is in the public interest for this Court to announce its decision in this case at the earliest practical time.

NOW, THEREFORE, IT IS ORDERED:

(1) That the judgment of the Superior Court in this case be and it is hereby AFFIRMED; and

(2) That the opinion of this Court, in support of its decision, be filed hereafter at the earliest practical time.

BY THE COURT:

Chief Justice