

TAX APPEAL BOARD OF THE STATE OF DELAWARE

George J. and Barbara J. Bennett, )  
 )  
 Petitioners, )  
 )  
 v. ) Docket No. 876  
 )  
 Director of Revenue, )  
 )  
 Respondent. )

Before: Joseph S. Yucht, Esquire, Chairman; John H. Cordrey, Esquire, Vice Chairman; Harry B. Roberts, David C. Eppes and Regina Dudzic, Members.

Petitioners: pro se

Respondent: Joseph Patrick Hurley, Jr., Esquire, Deputy Attorney General.

The parties have stipulated to the facts as follows:

1. George J. and Barbara J. Bennett, Petitioners, are husband and wife and at all times material were Delaware residents. Barbara Bennett moved to Delaware in September of 1983. George Bennett was already a Delaware resident.

2. The Bennetts were married to each other in August of 1984 and filed a resident, married filing combined separate Delaware return for tax year 1984 on March 24, 1985.

3. On the 1984 return, the Bennetts claimed credit for taxes imposed by the State of Pennsylvania in the amount of \$1,060.00.

4. The Division of Revenue disallowed \$370.00 of the claimed credit.

5. The \$370.00 disallowance stemmed from a \$370.00 tax payment made to the State of Pennsylvania on February 19, 1984. See Exhibit A attached.

6. The \$370.00 payment was attributable to income tax on capital gains realized from the sale of Barbara Tasker Bennett's principal residence in September, 1983.

DISCUSSION

The petitioners claimed that they are entitled to a \$370.00 income tax credit against their 1984 Delaware taxes for taxes paid to Pennsylvania. The \$370.00 tax payment was paid to the State of Pennsylvania on February 19, 1984. The payment was, however, attributable to income tax on capital gains realized from the sale of Barbara Tasker Bennett's principal residence in September, 1983. The petitioners claim that even though the tax pertains to 1983 income, it was not computed and billed to them until 1984 and, therefore, could not have been paid until 1984.

The respondent, the Director of Revenue, agrees with the petitioners that they should be allowed a \$370.00 credit against their Delaware taxes but agrees that the credit should be allowed in 1983 and not 1984. The respondent's argument is that the \$370.00 tax payment was attributable to 1983 income tax even though the payment was made in 1984.

DECISION AND ORDER

30 Del. C. Section 1111(a) states:

"(a) Allowance of credit. A resident individual shall be allowed a credit against tax otherwise due under this Chapter for the amount of any income tax imposed on him for the taxable year (emphasis added) 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."

It is clear from the statute that the credit is for tax imposed in a given year, regardless of when the tax is paid. The clear meaning of the statute is thus sufficient to decide this issue. It is also clear to this Board that the intention of the statute is to prevent double taxation. This intention would not always be achieved if the credit were allowable only when the tax is paid. Any number of circumstances could occur under this scenario which would yield inequitable results. For example, petitioners could have moved to a state which imposes no income tax at the time the tax was paid. Under their argument, they would be entitled to no tax credit and would be subject to a double tax.

Accordingly, the decision of the Director of Revenue is affirmed.

Henry B. Roberts  
David C. [unclear]

Joseph J. [unclear]  
John H. Cordery  
Regina C. [unclear]