

STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2023-6

[INDIVIDUAL TAXPAYERS]

Petitioners

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayers] (The “Taxpayers”), appeal from a decision on reconsideration by Maine Revenue Services (“MRS”) disallowing their claim of a Maine income tax credit for taxes imposed by another jurisdiction for tax year [year 1]. For the reasons discussed below, we uphold the assessment in full.

I. Background

At all relevant times, the Taxpayers were Maine resident individuals. During the year at issue, the Taxpayers owned a New York limited liability company (the “Company”), a pass-through entity for federal income tax purposes. *See* I.R.C. § 1363(a).

Beginning in tax year [year 1], New York enacted an optional pass-through entity (“PTE”) tax, which partnerships, S corporations and LLCs treated as partnerships, could elect to pay. *See* New York Tax Law sections 860-866 (McKinney 2022). This new tax was intended to mitigate the cap placed on the deductibility of state and local taxes by individuals at the federal level by imposing an entity level tax deductible as a business expense. In April of [year 2], the Taxpayers filed their [year 1] Maine Individual Income Tax return, reporting Maine taxable income of \$[amount] and Maine income tax liability of \$[amount]. The Taxpayers sourced \$[amount] of their Maine adjusted gross income to New York State and filed for a credit of

\$[amount] for income taxes paid to New York. The Taxpayers additionally claimed a credit of \$[amount] for income paid to [a third state] relating to income of \$[amount] sourced to [that third state]. The Taxpayers made tax payments to Maine in the amount of \$[amount] in [year 1]. They then calculated a total credit of \$[amount] for income taxes paid to other jurisdictions and applied it against their Maine income tax liability of \$[amount]. The Taxpayer calculated their net overpayment for [year 1] to be \$[amount], asked MRS to apply \$[amount] of their overpayment to their estimated tax for [year 2] and asked MRS to refund the balance of \$[amount].

Upon review of the Taxpayer's New York income tax return, MRS determined that the Taxpayers were not entitled to the credit as claimed. MRS noted that the Taxpayers had received a credit of \$[amount] against the New York tax liability of \$[amount] resulting from a PTE tax paid to New York State by the Company. In its Notice of Assessment, MRS found that the Taxpayers were not entitled to a credit for amounts paid by the Company but were entitled only to a credit for New York State income taxes they had paid. Thus, MRS reduced the credit for income taxes paid to other jurisdictions to \$[amount], consisting of \$[amount] paid to New York and \$[amount] paid to [a third state]. This reduced the Taxpayers' [year 1] income tax overpayment to \$[amount]. MRS then assessed income tax of \$[amount], penalties of \$[amount] and interest of \$[amount]. The Taxpayers requested reconsideration.

In its decision on reconsideration dated [date, year 3], MRS upheld its original determination but abated the \$[amount] penalty and determined the tax owed was \$[amount] with interest of \$[amount], for a total balance due of \$[amount]. This appeal followed.

On appeal, the Taxpayers argue that they are entitled to the income tax credit claimed on their Maine return and that the assessment must be cancelled in full. It is the Taxpayer's burden to show that they are entitled to the relief they seek. 36 M.R.S. § 151-D(10)(F). We consider

the matter on appeal de novo. *Id.* § 151(2)(G).

II. Discussion

Annually, Maine income tax is imposed “on the Maine taxable income of every resident individual of this State.” 36 M.R.S. § 5111. “Maine taxable income” is defined as “an individual’s federal adjusted gross income,” with certain modifications provided by Maine law not applicable to this case. *Id.* § 5121. Where an individual is a member of a pass-through entity, such as a subchapter S corporation or LLC, the individual’s federal adjusted gross income includes the individual’s pro rata share of the business income attributable to that entity. *See* I.R.C. §§ 1361-77. In circumstances where a Maine resident individual has income that was earned in and taxed by another state, Maine tax law provides a credit against the individual’s Maine income tax liability

for the amount of income tax imposed on that individual for the taxable year by another state of the United States . . . with respect to income subject to tax under this Part [Income Tax] that is derived from sources in that taxing jurisdiction.

36 M.R.S. § 5217-A.

The Taxpayers contend that they are entitled to a credit under section 5217-A against their Maine income tax liability pursuant to two theories. First, the Taxpayers argue that they are entitled to credit for the amount of tax imposed by New York upon the Company. Second, they argue that they are entitled to the credit for the amount of New York income tax imposed upon them as individuals. According to the Taxpayers, if no credit is provided to them under either theory, the Maine’s tax scheme is inequitable or unfair. We address each of the Taxpayer’s arguments in turn, below.

A. Credit for Taxes Imposed on the Company

The Taxpayers first argue that they are entitled to a credit under section 5217-A for income taxes imposed on the Company by New York. They argue that, as a pass-through entity, the

income of the Company flowed through to them for income tax purposes, and that the tax that New York imposed on the Company was functionally a tax upon their own personal income. The Maine Law Court considered the same argument advanced by the Taxpayer in *Goggin v. State Tax Assessor*, 2018 ME 111, 191 A.3d 341. In that case, the taxpayers were Maine residents who owned a New Hampshire limited liability company, a pass-through entity for federal income tax purposes. New Hampshire imposed a “business profits tax” and “business enterprise tax” on the taxpayers’ company, which the company timely paid. On their Maine income tax return, the taxpayers claimed a credit under section 5217-A for the tax imposed on the company by New Hampshire. The Court examined the language of the Maine credit and determined that, for purposes of section 5217-A, the plain meaning of the statute “excludes taxes that are imposed on, and paid by, business entities.” *Id.* at ¶ 16.

We considered the same argument in *Individual Joint Taxpayers v. Me. Revenue Servs.*, BTA-2020-01 (Me. Bd. Tax App. March 1, 2021). Therein, Connecticut, like New York in this matter, imposed a new tax upon certain pass-through entities with an offsetting income tax credit for the entity owners intended to mitigate the cap placed on the deductibility of state and local taxes by individuals at the federal level. We determined that the taxpayers were not entitled to the credit even though the Company’s income passed through to the taxpayers because the plain meaning of the statute excludes taxes that are imposed on, and paid by, business entities.

In the present case, the Taxpayers are similarly seeking credit for a tax that was not imposed on them but was instead imposed on the Company, a separate business entity. As discussed above, even though the Company’s income passed through to the Taxpayers, the Maine credit is limited by its terms to taxes imposed on individuals. The Taxpayers have not shown that they are entitled to the credit provided under section 5217-A for taxes imposed on the Company by the State of New York. No adjustment to the assessment on this basis is

warranted.

B. Credit for Taxes Imposed on the Taxpayer

The Taxpayers next contend that they are entitled to a credit against their Maine income tax liability for the amount of individual income tax imposed on them by New York. Under 36 M.R.S. § 5217-A, a Maine income tax credit is specifically provided “for the amount of income tax imposed on [an] individual for the taxable year by another state . . .” Therefore, the question presented is how the credit is computed.

In examining the credit, we first note that section 5217-A operates “with respect to income subject to tax [by Maine] that is derived from sources in [the other] taxing jurisdiction.” *Id.* Additionally, as used in section 5217-A, the “[i]ncome taxes imposed by another jurisdiction means the tax *after credits* (except withholding and estimated tax payments).” *See* Maine Revenue Services, Income/Estate Tax Division, *Credit for Taxes Paid to Another Jurisdiction, Guidance Document*, page 3, (December 2019) (emphasis added). After application of all available credits—including the credit for the Company’s New York pass-through entity tax—the Taxpayers had a New York individual income tax liability of \$[amount] rather than the \$[amount] initially claimed upon the Taxpayers’ Maine income tax return. Consequently, the Taxpayers have not shown that they are entitled to any adjustment to the assessment under section 5217-A for individual income taxes imposed upon them by New York. No adjustment to the assessment on this basis is warranted.

C. Other Considerations

The Taxpayers argue that if section 5217-A does not provide them with a credit against their Maine tax liability, then the Maine income tax scheme violates principles of equity and fundamental fairness. We disagree.

The Taxpayers argue that the statute is unfair and operates to give the State of Maine a

windfall. However, Maine courts have consistently found that, where taxation is concerned, equitable considerations cannot be invoked. *See, e.g., Fitzgerald v. City of Bangor*, 1999 ME 50, ¶ 15, 726 A.2d 1253. Where circumstances warrant, MRS may abate a tax liability “if justice requires.” 36 M.R.S. § 142. MRS also has the authority to settle a tax liability for a lesser amount “upon the grounds of doubt as to liability or doubt as to collectability, or both.” *Id.* § 143. As provided by each of those sections, however, MRS’s decision to deny relief thereunder is not subject to appeal to the Board. *Id.* §§ 142, 143.” No adjustment to the assessment is warranted on this basis.

The Taxpayers finally argue that the statute violates ideas of fundamental fairness. Because this argument seems to imply constitutional considerations, we reach it last. *See, e.g., Dobbins v. Dobbins*, 2020 ME 73, ¶ 15, 234 A.3d 223. However, the Maine Law Court has already determined that section 5217-A and Maine’s related tax laws do not violate the Constitution. *See Goggin v. State Tax Assessor*, 2018 ME 111, ¶ 26, 191 A.3d 341. Further, a taxpayer “challenging the constitutionality of a statute bears a heavy burden of proving unconstitutionality, since all acts of the Legislature are presumed constitutional.” *Id.* at ¶ 20 (cleaned up). Here, the Taxpayers have made no specific argument as to the constitutionality of the law in question. Accordingly, no adjustment to the assessment is warranted on this basis.

III. Decision

We find that the Taxpayer is not entitled to a credit for taxes paid to another jurisdiction pursuant to section 5217-A based upon the pass-through entity tax imposed upon the Company for the period at issue.

The Board may, in limited circumstances, reconsider its decision on any appeal. If either party wishes to request reconsideration, that party must file a written request with the Board within 20 days of receiving this decision. Contact the Appeals Office at 207-287-2864 or see the Board’s

rules, available at <http://www.maine.gov/boardoftaxappeals/lawsrules/>, for more information on when the Board may grant reconsideration. If no request for reconsideration is filed within 20 days of the date of this proposed decision, it will become the Board's final administrative action. If either party wishes to appeal the Board's decision in this matter to the Maine Superior Court, that party must do so within 60 days of receiving this decision. During the 60-day period in which an appeal may be filed with the Superior Court, the taxpayer may contact Maine Revenue Services at 207-624-9595 for a statement of the amount then due. After that 60-day period has expired, Maine Revenue Services will contact the taxpayer with an updated statement of the amount or amounts due at that time.

_____ Date: _____