

STATE OF MAINE  
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS  
DOCKET NO. BTA-2016-21

[INDIVIDUAL TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayer (the “Taxpayer”)] appeals from an estimated assessment of Maine income tax, interest, and penalties for tax year [year] on the ground that the assessment is overstated. We adjust the assessment.

#### I. Background

At all relevant times, [the Taxpayer] was a resident individual of the State of Maine. He did not timely file a Maine income tax return for tax year [year], prompting MRS to send him a request, and later a demand, that he file that return. When he did not respond to MRS’s filing demand, MRS issued an estimated assessment for Maine income tax of \$[amount], interest of \$[amount], and penalties of \$[amount], for a total of \$[amount]. 36 M.R.S. § 141(2)(C).

[The Taxpayer] timely requested that MRS reconsider its estimated assessment, upon which MRS issued its decision on reconsideration, upholding its estimated assessment in full. 36 M.R.S. § 151(1), (2). He then timely appealed the assessor’s final determination to the Board. *Id.* § 151(2)(E).

On appeal, [the Taxpayer] argues that the assessment is overstated because it fails to give him credit for taxes that he paid to Massachusetts for [tax year]. Both MRS and [the Taxpayer] submitted evidence and argument in support of their respective positions. In support of his position, [the Taxpayer] submitted a copy of his [tax year] Maine income tax return showing

Maine adjusted gross income of \$[amount], calculated Maine tax of \$[amount], a credit for tax paid to Massachusetts of \$[amount], and a net Maine income tax liability of \$[amount]. [The Taxpayer] also submitted a copy of a [tax year] W-2 form showing Massachusetts earnings of \$[amount] and Massachusetts withholding of \$[amount],<sup>1</sup> and a signed copy of his [tax year] Massachusetts income tax return showing a liability of \$[amount].

Based on the evidence submitted, the Appeals Officer prepared a recommended decision for consideration by the Board. Prior to submitting the recommendation to the Board, however, the Appeals Officer provided it to the parties for review and comment. 18-674 C.M.R. ch. 100, § 205(2)(A). As prepared, the recommended decision allowed [the Taxpayer] the credit that he claimed under 36 M.R.S. § 5217-A (the “Credit”) against his Maine income tax liability for taxes that he paid to Massachusetts, thereby reducing his Maine tax liability from the assessed amount of \$[amount] to \$[amount], together with corresponding reductions in penalties and interest.

Following review of the recommended decision, MRS agreed that [the Taxpayer] was entitled to the Credit, but disagreed with the Credit computation described in the Appeals Officer’s recommended decision. According to MRS, [the Taxpayer] owed Maine tax of \$[amount], not \$[amount], plus penalties and interest. Based on MRS’s comments, the Appeals Officer revised the recommended decision to provide a more detailed description of the Credit computation and to clarify that the plain language of the statute supported [the Taxpayer]’s computation method and disproved MRS’s method. The Appeals Officer again solicited comments from the parties regarding the redrafted recommendation. In response, MRS sent correspondences to [the Taxpayer] and to the Appeals Officer stating that it had cancelled the assessment because it was overstated, and that the appeal was therefore concluded. MRS also

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<sup>1</sup> The portion of [the Taxpayer]’s Massachusetts withholding that exceeded his Massachusetts income tax liability does not, per se, constitute income tax “imposed on that individual for the taxable year” for purposes of the credit under 36 M.R.S. § 5217-A.

wrote that it would later issue a new, corrected assessment against [the Taxpayer] from which he may appeal again if he so chooses.<sup>2</sup>

MRS contends that its cancellation of the assessment deprives the Board of jurisdiction to decide [the Taxpayer]'s appeal. Alternatively, MRS argues that [the Taxpayer] and the Appeals Officer incorrectly computed the amount of the Credit to which [the Taxpayer] is entitled, thereby understating his Maine tax liability.

[The Taxpayer] has the burden to show that the tax amount stated on his [year] Maine return is correct. 36 M.R.S. § 151-D(10)(F).

## II. Discussion

### A. Mootness

MRS argues that [the Taxpayer]'s appeal is rendered moot by MRS's unilateral action of dismissing the underlying assessment without prejudice. A case is moot where "there is no longer any actual controversy." Black's Law Dictionary 1100 (9th ed. 2009) (defining "mootness doctrine"). As explained by Maine's Law Court,

[a]n issue is moot when there is no real and substantial controversy, admitting of specific relief through a judgment of conclusive character. When determining whether a case is moot, we examine whether there remain sufficient practical effects flowing from the resolution of the litigation to justify the application of limited judicial resources.

*McGettigan v. Town of Freeport*, 2012 ME 28, ¶ 10, 39 A.3d 48 (quotation marks and citations omitted). However, the mootness doctrine does not apply where, as under the facts of the present case, an issue escapes review "due to a party's voluntary cessation of—and ability to resume—the challenged conduct." *LeGrand v. York County Judge of Probate*, 2017 ME 167 ¶ 28 n.4, 168 A.3d 783.

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<sup>2</sup> We note that if any subsequent assessment against [the Taxpayer] is for an amount of less than \$1,000, then an appeal must be taken to the Superior Court and may not be taken to the Board. 36 M.R.S. § 151(2)(E).

In the present case, MRS has already stated that it intends to reassert against [the Taxpayer] its preferred method of computing the Credit, as discussed in more detail below. Based on MRS's representation, this issue is unresolved, recurring, and excepted from the mootness doctrine. *Cf. Church of Scientology of Hawaii v. United States*, 485 F.2d 313, 317 (9<sup>th</sup> Cir. 1973) (mere possibility of a continuing recurrence of the problem was sufficient to entitle the taxpayer to have the underlying legal issue determined). Under the circumstances, MRS's cancellation of its assessment against [the Taxpayer] does not render [the Taxpayer]'s appeal moot.

#### B. Computing the Credit under Section 5217-A

Annually, Maine imposes a tax “on the Maine taxable income of every resident individual of this State.” 36 M.R.S. § 5111. However, a resident individual is allowed a credit against his or her Maine income tax for the amount of tax imposed on that individual by another state. 36 M.R.S. § 5217-A.<sup>3</sup> The Credit provided by section 5217-A is for the amount of tax paid to another state on income derived from sources in that other state that is part of Maine

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<sup>3</sup> Section 5217-A provides, in full, as follows:

A resident individual is allowed a credit against the tax otherwise due under this Part [income tax], excluding the tax imposed by section 5203-C [minimum tax], for the amount of income tax imposed on that individual for the taxable year by another state of the United States, a political subdivision of any such state, the District of Columbia or any political subdivision of a foreign country that is analogous to a state of the United States with respect to income subject to tax under this Part that is derived from sources in that taxing jurisdiction. *In determining whether income is derived from sources in another jurisdiction, the assessor may not employ the law of the other jurisdiction but shall instead assume that a statute equivalent to section 5142 [sourcing] applies in that jurisdiction.* The credit, for any of the specified taxing jurisdictions, may not exceed the proportion of the tax otherwise due under this Part, excluding the tax imposed by section 5203-C, that the amount of the taxpayer's Maine adjusted gross income derived from sources in that taxing jurisdiction bears to the taxpayer's entire Maine adjusted gross income; except that, when a credit is claimed for taxes paid to both a state and a political subdivision of a state, the total credit allowable for those taxes does not exceed the proportion of the tax otherwise due under this Part, excluding the tax imposed by section 5203-C, that the amount of the taxpayer's Maine adjusted gross income derived from sources in the other state bears to the taxpayer's entire Maine adjusted gross income.

(Emphasis added).

adjusted gross income.<sup>4</sup> Under the plain language of section 5217-A, the Credit is figured by multiplying the Maine tax by the ratio of “the taxpayer’s Maine adjusted gross income derived from sources in [the other state]” to “the taxpayer’s entire Maine adjusted gross income.” *Id.* The amount of the Credit is the lesser of the computed amount or the tax actually paid to the other jurisdiction.

The evidence presented in this case shows that 87.87% of [the Taxpayer]’s income that is subject to Maine tax was sourced to Massachusetts (i.e., \$[amount] out of \$[amount]). Accordingly, under the plain language of section 5217-A, the Credit to which [the Taxpayer] is entitled equals either 87.87% of his Maine tax or the actual amount imposed by and paid to Massachusetts, whichever is less. In this case, the computed amount of the Credit is \$[amount] (87.87% of the \$[amount] Maine tax), which is greater than the \$[amount] that [the Taxpayer] actually paid to Massachusetts. Therefore, [the Taxpayer] is entitled to a Credit under section 5217-A of \$[amount] that he actually paid to Massachusetts.

MRS contends that in computing the Credit under section 5217-A, [the Taxpayer]’s Massachusetts income must first be reduced under Massachusetts tax law to an amount “analogous to Maine adjusted gross income.” MRS does not point to any authority supporting its departure from the plain language of section 5217-A in computing the Credit, and we are aware of no authority supporting this method.

Because we find that [the Taxpayer] correctly computed the Credit under section 5217-A entitling him to credit for taxes paid to Massachusetts of \$[amount], we further find that he correctly computed his Maine net income tax liability of \$[amount] for [tax year]. The estimated assessment of tax, interest, and penalties is adjusted accordingly.

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<sup>4</sup> For a resident individual, Maine adjusted gross income is defined as “the federal adjusted gross income of that individual, as modified by section 5122.” 36 M.R.S. § 5102(1-C)(A).

### III. Decision

MRS's cancellation of the underlying assessment against [the Taxpayer] does not render [the Taxpayer]'s appeal moot. Furthermore, based on the evidence presented, we find that [the Taxpayer] has shown that he is entitled to the credit that he claimed for taxes paid to another jurisdiction for the year at issue. Accordingly, we adjust the estimated assessment of income tax, interest, and penalties for the tax year as discussed above. No further adjustment is warranted.

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 motion 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 207-624-9725 for the amount of tax that is currently due, together with any interest or penalties owed. After that 60-day period has expired, Maine Revenue Services will contact [the Taxpayer] with an updated amount of tax and any interest or penalties due at that time.

Issued by the Board: October 30, 2017