

[INDIVIDUAL TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayer] (The “Taxpayer”) appeals from a decision issued by Maine Revenue Services (“MRS”) assessing tax and interest for tax year [year]. The Taxpayer argues the assessment must be canceled because it was incorrectly made. Based on the applicable law and the evidence submitted, we reduce the assessment and uphold it as thus adjusted.

I. Background

At all relevant times, the Taxpayer was a non-Maine resident individual who worked in both Maine and Massachusetts. According to information provided by the Taxpayer on appeal, they had federal adjusted gross income of \$[amount] for tax year [year]. Of this, \$[amount] (77.82%) was Maine source income and \$[amount] (21.18%) was Massachusetts source income.

For tax year [year], the Taxpayer did not file a Maine income tax return. Because the Taxpayer did not file a return, MRS issued an assessment against them based upon the best information then available and assessing Maine income tax, penalties, and interest for the year. The Taxpayer responded to the assessment by filing a return. In preparing this return, the Taxpayer began with their Maine source income and claimed the maximum allowable Maine itemized deductions in calculating the total tax. They then offset the total tax with a nonresident

credit in arriving at their Maine income tax liability. As prepared by the Taxpayer, their return showed a net overpayment, which they requested be refunded to them.

Upon receipt of the Taxpayer's return, MRS recomputed the Taxpayer's Maine income tax liability beginning with their federal adjusted gross income treating their entire income as Maine source income. In preparing this return, MRS reduced the Taxpayer's Maine itemized deductions to zero before arriving at the total tax as if the Taxpayer was a Maine resident individual. MRS then computed and applied a nonresident tax credit to the Taxpayer's total tax, which reduced the Taxpayer's total tax by 21.18%. As figured by MRS, the Taxpayer was not due a refund but instead had a net Maine income tax liability of \$[amount]. Consequently, MRS issued the Taxpayer a revised assessment in the total amount of \$[amount] comprising tax of \$[amount], penalties of \$[amount], interest of \$[amount], and income tax withholding credits of \$[amount]. On reconsideration, MRS abated the penalties in full. This appeal followed.

On appeal, the Taxpayer argues the computation made by MRS is incorrect and that they are entitled to the refund requested. In the alternative, the Taxpayer argues that Maine has unconstitutionally taxed them on non-Maine source income and at a higher marginal rate than similarly situated Maine resident individuals. It is the Taxpayer's burden to show that the assessment is incorrect. 36 M.R.S. § 151-D(10)(F). We consider the matter on appeal de novo as to both facts and law. *Id.* § 151(2)(G).

II. Discussion

Under Maine law, "a tax is imposed for each taxable year on the Maine adjusted gross income of every nonresident individual." 36 M.R.S. § 5111(4). The procedure for computing the tax liability of a nonresident individual is a two-step process. First, the nonresident must determine their total tax as if they were a Maine resident individual based on

the individual's federal adjusted gross income as defined by the [Internal Revenue] Code with the modifications and less the deductions and personal exemptions provided in [chapter 805 of Title 36].

Id. §§ 5111(4), 5102(1-C)(A), 5121. Next, the nonresident must determine the portion of the total tax that is attributable to Maine by multiplying the total tax by a ratio, the numerator of which is the nonresident's Maine adjusted gross income and the denominator of which is the nonresident's federal adjusted gross income, as modified by section 5122. *Id.* §§ 5111(4), 5102(1-C)(A), (B). In practice, rather than multiply the total tax by the statutory ratio, MRS requires a nonresident individual to compute an offsetting credit to be applied against the total tax. *See* 18-125 C.M.R. ch. 806 § 03. This offsetting credit is determined by multiplying the total tax by a ratio, the numerator of which is the non-Maine income and the denominator of which is the federal adjusted gross income as modified by section 5122. *Id.* This method yields the same net tax due as the statutory method.

In the present case, MRS computed the Taxpayer's Maine income tax liability, beginning with their federal adjusted gross income without modification. Based upon the Taxpayer's unmodified federal adjusted gross income, MRS reduced the Taxpayer's itemized deductions to zero because, for the tax year at issue, Maine phased out itemized deductions for individuals with federal adjusted gross income in excess of \$145,000 as modified by Maine law. 36 M.R.S. §§ 5125(6)(A); 5102(1-C)(A); 5111(4). After arriving at the total tax as if the Taxpayer was a Maine resident individual, MRS computed an offsetting nonresident tax credit and applied it to the total tax in arriving at the Taxpayer's net Maine income tax liability of \$[amount]. As MRS computed the Taxpayer's tax according to the method described above and the Taxpayer has alleged no modifications to their federal adjusted gross income, we find no error in MRS's computation. However, MRS assessed the Taxpayer's Maine income tax of \$[amount] due to

typographical error. Having found MRS's computation method to be correct, we find error in the assessment, adjust the Maine income tax assessed to \$[amount], and cancel the interest associated with the difference. No further adjustment on this basis is warranted.

The Taxpayer next argues that Maine's tax system unconstitutionally taxes them on income properly sourced to other states. On the evidence presented, 77.82% of the Taxpayer's [year] income was Maine-source income. As computed by MRS and adjusted above, the Taxpayer's Maine income tax liability was 77.82% of the tax computed as if they were a Maine resident individual. On the evidence presented, the Taxpayer has not shown that the assessment, as adjusted above, imposed Maine tax on their non-Maine source income. No adjustment on this basis is warranted.

Lastly, the Taxpayer argues the Maine tax scheme unconstitutionally taxes them at a higher marginal rate than Maine resident individuals whose total income was equal to their Maine source income. The tax rate applied to a nonresident is measured by the nonresident's entire federal adjusted gross income and not only the nonresident's Maine source income. *Id.* § 5111. This ensures that Maine taxes resident and nonresident individuals at the same marginal rate in relation to their entire income, regardless of the source. The Maine Law Court has previously found such a system does not violate the constitution. *Stevens v. State Tax Assessor*, 571 A.2d 1195, 1197 (1990). The Taxpayer has not shown the tax rates applied to them to be unconstitutional. No adjustment on this basis is warranted. We uphold the assessment as adjusted, above.

III. Decision

Based on the law and evidence presented, we do not find MRS' computation of the Taxpayer's Maine income tax liability for tax year [year] to be incorrect. However, we find

MRS incorrectly assessed tax of \$[amount] instead of \$[amount] and reduce the amount of tax contained in the assessment to \$[amount], with a proportionate adjustment to the assessed interest. As adjusted, we do not find the Maine tax scheme to be unconstitutional as applied to the Taxpayer.

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.

BY ORDER OF THE BOARD

Date: _____, Chair/Member