

STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2021-3

INDIVIDUAL TAXPAYER,

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayer] (the “Taxpayer”) appeals from a Decision on Reconsideration issued by Maine Revenue Services (“MRS”) upholding the assessment of individual income tax for tax year [year 3] and denying their request for refunds for tax years [year 4] and [year 5]. After considering the parties’ arguments and the evidence presented, we uphold the assessment and refund denials in full.

I. Background

At all relevant times, the Taxpayer was a Maine resident individual. They began trading in virtual currency in [year 3], and they realized substantial gains from that activity in that year. However, over the course of [year 4] and [year 5], the activity produced substantial losses, and they ceased trading in virtual currency altogether in late [year 5].

The Taxpayer filed their Maine individual income tax returns for tax years [year 3], [year 4], and [year 5], on April 8, [year 4], April 15, [year 5], and April 18, [year 6], respectively, and they paid the taxes shown as due with those returns.¹ Unaware that their virtual currency

¹ For [year 6], the Maine return was due in April 18 instead of April 15 due to the Emancipation Day and Patriot’s Day holidays.

transactions constituted taxable events, the Taxpayer did not report their gains or losses from that activity on their Maine or federal returns.

In [year 9], the Internal Revenue Service (“IRS”) sent the Taxpayer a letter, informing them that they may not have properly reported their virtual currency transactions and advising them to file amended returns if necessary. Thereafter, on November 18, [year 9], the Taxpayer filed amended federal and Maine returns for the tax years at issue. As amended, the Taxpayer’s Maine returns reported that they owed additional tax of \$[amount] for [year 3] and had overpayments of \$[amount] and \$[amount] for [year 4] and [year 5], respectively, which they requested be credited against their [year 3] liability or refunded directly.² MRS received the Taxpayer’s amended return for [year 3] and issued an assessment for the tax and additional penalties and interest, together with an overpayment credit for tax year [year 6]. The total amount due for [year 3] under the assessment was \$[amount].³ As for [year 4] and [year 5], MRS denied both of the Taxpayer’s requests for refund as time barred. This appeal followed.

On appeal, the Taxpayer argues that their requests for refunds for tax years [year 4] and [year 5] must be allowed or that the assessment for tax year [year 3] be canceled. It is the Taxpayer’s burden to show that they are entitled to relief. 36 M.R.S. § 151-D(10)(F). We consider the matter de novo as to facts and law. *Id.* § 151(2)(G).

² We note that, the Taxpayer also requested refunds on their tax year [year 4] and [year 5] federal returns. However, the IRS denied those requests.

³ MRS canceled the penalty portion of the assessment on reconsideration.

II. Discussion

A. Refunds for Tax Years [year 4] and [year 5]

Annually, a resident individual is required to make and file a Maine income tax return if the individual has a Maine income tax liability for the year. 36 M.R.S. § 5220. The return is typically due on April 15 of the year following the subject tax year. *Id.* § 5227; 26 U.S.C. § 6072. If there is a subsequent change or correction affecting the individual's Maine liability, the individual must then file an amended return. 36 M.R.S. § 5227-A. In the present case, the Taxpayer timely filed their original returns for [year 4] and [year 5] and paid the taxes shown as due thereon.

Under Maine income tax law, a request for credit or refund must be filed “within 3 years from the date the return was filed, whether or not the return was timely filed, or 3 years from the date the tax was paid, whichever period expires later.” *Id.* § 5278(1). Further, Maine tax law limits the amount of a credit or refund to “the portion of the tax that was paid within the 3 years immediately preceding the filing of the claim plus the period of any extension of time for filing the return.” *Id.* § 5278(2).

To determine whether the Taxpayer's tax payments for [year 4] and [year 5] were eligible for refund, we must first determine when those payments of tax were made. In this case, the Taxpayer's tax payments for [year 4] and [year 5] were made throughout those respective years by virtue of income tax withholding. Accordingly, pursuant to 36 M.R.S.A. § 5279(2)(B), the tax for those years is deemed to have been paid on April 15 of [year 5] and April 18 of [year 6]—the respective return due dates.

Next, section 5231(1) provides that MRS may grant a reasonable extension of time for filing a Maine income tax return “not [to] exceed 8 months.” We recognize that under this

provision, MRS allows an automatic six-month extension for the filing of Maine returns, including those for the years at issue. *Now see* https://www.maine.gov/revenue/faq/individual-income-tax#faq1040_2 (MRS website FAQ page, Individual Income Tax section) (last visited August 18, 2021). However, this automatic extension did not extend the time for payment of taxes.

Considering the foregoing analysis, we determine that under section 5278(2), the last day on which the Taxpayer could successfully request a refund for [year 4] was April 15, [year 8], and the last day on which the Taxpayer could have successfully requested a refund for [year 5] was April 18, [year 9]. Because the refund requests for [year 4] and [year 5] were not filed within the time specified above, no refund for the tax paid by the Taxpayer is permitted by Maine law.⁴

The Taxpayer argues that the time limitation of section 5278(2) should not be applied to them because to do so would unfairly deprive them of the ability to utilize their virtual currency losses to offset their virtual currency gains. Further, the Taxpayer argues that neither the IRS nor MRS sufficiently apprised them or the public of the tax treatment of virtual currency gains and losses at the time of filing. Even so, the Maine Law Court has recognized that time limitations are to be strictly construed. *Dowling v. Salewski*, 2007 ME 78 ¶ 11, 926 A.2d 193; accord *United States v. Dalm*, 492 U.S. 596, 610 n.7 (1990) (“The very purpose of statutes of limitations in the tax context is to bar the assertion of a refund claim after a certain period of time has passed, without regard to whether the claim would otherwise be meritorious.”). The Legislature has provided no exception to the refund limitations that would apply to the circumstances

⁴ We note that, had the IRS granted the Taxpayer’s requests for federal refunds for tax years [year 4] and [year 5], the Taxpayer would have had “a change or correction affecting the Taxpayer’s liability” pursuant to Section 5227-A(1), and the Taxpayer would then have been “required” to file amended Maine returns pursuant to 36 M.R.S.A. § 5227-A, and the limitations period for their refund claims would have been controlled by 36 M.R.S.A. § 5278(4).

complained of. Accordingly, we are unable to extend the time limitation imposed by section 5278(2). No adjustments to the refund denials for tax years [year 4] and [year 5] are warranted.

B. Tax Liability for 2013

The Taxpayer next argues that the tax portion of the assessment against them for [year 3] must be cancelled because it is unfair to tax them on their virtual currency gains without allowing their claims of virtual currency losses. Even so, we are unaware of any statutory provision empowering the Board to cancel an assessment based upon equitable considerations such as a fairness, and the Taxpayer has cited none. Maine courts have 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.

MRS may abate a tax liability “if justice requires” when a written request has been submitted by a taxpayer within 3 years of the date of assessment. 36 M.R.S.A. § 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. However, as provided by each of those sections, MRS’s decision to deny relief thereunder is not subject to appeal to the Board. *Id.* §§ 142, 143. Consequently, no adjustment to the assessment is warranted on this basis.

C. Interest

The Taxpayer also argues that the interest portion of the [year 3] assessment must be cancelled under the circumstances presented.

Interest accrues automatically on the tax amount due, computed from the last date prescribed for payment and compounded monthly. 36 M.R.S. § 186. Interest may be waived or abated if the failure to pay the tax at issue “is explained to the satisfaction” of MRS or, on appeal, to the Board. *Id.* §§ 186, 151(2)(G), *Victor Bravo*, 2012 ME 32, ¶¶ 12-15, 39 A.3d 65.

The purpose of interest is not punitive. The issue here is whether the value of the time benefit of the unpaid tax should be reallocated from MRS to the Taxpayer. *See id.* ¶ 14 (the standard for abatement of interest “supports the reasonable purpose of most statutory and contractual interest payment requirements to assure that the investment value of money inures to the benefit of the party that should have been paid the money when the payment obligation arose”).

We are sympathetic to the Taxpayer’s circumstances. However, MRS remains entitled to the time value of the unpaid tax. We therefore uphold the assessment of interest in full. No abatement of interest is warranted.

III. Decision

Based on the law and evidence presented, we find that the Taxpayer’s requests for refunds for tax years [year 4] and [year 5] were correctly denied and that he has not shown that the assessment for tax year [year 3] should be canceled or abated. Accordingly, we uphold the denials of refunds and the assessment in full.

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.

BY ORDER OF THE BOARD

Date: _____, Chair/Member