

[INDIVIDUAL TAXPAYERS]

Petitioners

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayers] (collectively the “Taxpayers”) appeal from a decision on reconsideration issued by Maine Revenue Services (“MRS”) upholding a notice of assessment of tax of \$[amount] for tax year [year 2] based upon MRS’s determination that there was no basis under Maine law for an income subtraction modification the Taxpayers claimed in connection with distributions of a Thrift Savings Plan. Based on the evidence and the applicable law, we uphold the assessment in full.

I. Background

In [year 1], the Taxpayers moved from New Jersey to Maine. Previous to their move, the Taxpayers made contributions to a Thrift Savings Plan (“TSP”). These contributions were taxed by the State of New Jersey. *See* N.J. Stat. §§ 54A:5-6. In tax year [year 2], the Taxpayers took \$[amount] in distributions from their TSP. The Taxpayers timely filed their [year 2] Maine Individual Income Tax Return (the “Return”) on [date], [year 3]. The Return reported a Federal Adjusted Gross Income of \$[amount]. On Schedule 1S of the Return, the Taxpayers set forth the following Income Subtraction Modifications:

Line 1	Social Security Benefits	\$[amount]
Line 4	Pension income deduction	\$[amount]

Line 26	Other	[\$amount]
Line 27	Total Subtractions	[\$amount]

The Taxpayer’s Line 26 Income Subtraction Modification represented 54.72% of their TSP distributions for the year. The Taxpayers believed they were entitled to this Line 26 Income Subtraction Modification to offset the taxes paid to New Jersey on the initial contributions to the TSP.

After reducing their Federal Adjust Gross Income by the total Income Subtraction Modifications, the Taxpayers determined their [year 2] Maine Adjusted Gross Income to be \$[amount]. The Taxpayers then reduced their Maine Adjusted Gross Income by the standard deduction of \$30,700 and applied an exemption of \$[amount], arriving at a Maine Taxable Income of \$[amount]. The Taxpayers computed the total tax owed on their Maine Taxable Income as \$[amount], and they requested a refund of \$[amount] based on a withholding of \$[amount].

On [date], [year 3], MRS sent the Taxpayers a Return Correction Notice (the “Notice”) removing the Line 26 “Other” Income Subtraction Modifications, reducing the total Income Subtraction Modifications to \$[amount]. This increased the Taxpayers’ Maine Adjusted Gross Income to \$[amount] and their [year 2] Maine taxable income to \$[amount]. With these adjustments, MRS determined the total tax due from the Taxpayers to be \$[amount], reduced by withholdings of \$[amount], for a total of \$[amount] due. The Taxpayers timely petitioned for Reconsideration.

On Reconsideration, MRS upheld its determination, explaining that distributions from a TSP are not amongst the modifications and deductions to Federal Adjusted Gross Income provided by Maine Statute noting that distributions were reported as “taxable” on boxes 2a of the

forms 1099-R filed with the Taxpayers return and were included in Taxpayers' Federal Adjusted Gross Income. *See* 36 M.R.S.A. §§ 5121-5132. The Taxpayers timely appealed.

It is the Taxpayers' burden to show that the assessment is incorrect. *Id.* § 151-D(10)(F). We consider the matter on appeal de novo as to both facts and law. *Id.* § 151(2)(G).

II. Discussion

A Thrift Savings Plan or "TSP" is a tax-deferred retirement savings plan for Federal civilian employees established under the Federal Employees' Retirement System Act of 1986. 5 U.S.C. §§ 8401 et seq. "The purpose of the TSP is to provide retirement income through savings and tax deferred benefits that many private corporations offer their employees. The TSP is similar to private sector 401(k) plans." www.jobs.irs.gov/resources/thrift-savings-plan-tsp (last visited 12-17-2024). Under federal tax law, contributions to / or distributions from a Thrift Savings Plan are treated the same as contributions to or distributions from a 401(k) plan. *See* 5 U.S.C. § 8440; *see also* I.R.C. §§ 401, 501. Here, the Taxpayers' distributions from the Thrift Savings Plan were included in their Federal Adjusted Gross Income.

"The Maine taxable income of a resident individual is equal to the individual's federal adjusted gross income with the modifications and less the deductions and personal exemptions provided [in Chapter 805 of Title 36]." 36 M.R.S.A. § 5121. Chapter 805 does not contain a modification, deduction, or exemption for distributions from a Thrift Savings Plan. *See id.* §§ 5121- 5132.

Here, the Taxpayers ask for us to (A) remove part of their TSP distribution from their Federal Adjusted Gross Income; (B) add an Income Modification Subtraction to Maine Statutes for part of their TSP distribution; (C) provide a credit for tax paid to another jurisdiction for the taxes paid on the relevant contributions to their TSP; or (D) find the tax at issue unconstitutional.

We address each request, in turn, below. We note, we dispose of all other arguments before reaching constitutional issues. *See, e.g., Individual Joint Taxpayers v. Me. Revenue Servs.*, BTA-2023-06 (Me. Bd. Tax App. April 29, 2024).

A. Removal from Federal Adjusted Gross Income

We have previously observed that:

The Maine Supreme Court’s longstanding interpretation of section 5121—defining a resident’s Maine taxable income as his or her federal adjusted gross income as modified by statute—forecloses any administrative or judicial inquiry into the nature or composition of the funds included in federal adjusted gross income.

Individual Joint Taxpayers v. Me. Revenue Servs., BTA-2015-4 (Me. Bd. Tax App. Jan. 4, 2016), *citing Tiedemann v. Johnson*, 316 A.2d 359 (Me. 1974); *Blair v. State Tax Assessor*, 585 A.2d 957 (Me. 1984); *Green v. State Tax Assessor*, 562 A.2d 1217 (Me. 1989); *Smith v. State Tax Assessor*, 2004 ME 120, 860 A.2d 387. Here, we find no reason to deviate from this position to inquire as to the propriety of the inclusion of the Thrift Savings Plan distribution in the Taxpayers’ Federal Adjusted Gross Income. No adjustment is warranted on this basis.

B. Addition of an Income Subtraction Modification

We next consider the Taxpayers’ argument that an Income Subtraction Modification be added to the Maine Statutes because the contributions made to the Thrift Savings Plan in question were previously taxed by the State of New Jersey. However, we are unaware of any statute or provision of law empowering the Board to do so. 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. Put another way, the jurisdiction and powers of the Board are purely statutory—similar to that of the divorce courts—therefore, its authority to act on matters of taxation must arise out of statutory law or not at all.

See Dobbins v. Dobbins, 2020 ME 73, ¶ 12, 234 A.3d 223, 228. No adjustment is warranted on this basis.

C. Credit for Taxes Paid to Another Jurisdiction

Maine law provides its residents with a credit for income taxes paid to other jurisdictions:

A resident individual is allowed a credit against the tax otherwise due under this Part, . . . 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 that is derived from sources in that taxing jurisdiction.

36 M.R.S.A. § 5217-A (emphasis supplied). “We look to the plain meaning of the statute to give effect to the Legislature’s intent. . . .” *Assessor v. MCI Commc’s. Servs.*, 2017 ME 119, ¶ 7, 164 A.3d 952. Further, as a matter of legislative grace, Income Modification Subtractions must be strictly construed. *See, e.g., Goggin v. State Tax Assessor*, 2018 ME 111, ¶ 14, 191 A.3d 341, 345. By its own terms, section 5217-A limits the credit available to income tax imposed on the individual for the taxable year at issue. No adjustment is warranted on this basis.

D. Constitutional Concerns

The Taxpayers finally raise the argument that the inclusion of that portion of their distributions from their TSP representing returns of their contributions which were previously taxed by New Jersey in their Maine Taxable Income results in unconstitutional double taxation.

In considering this argument, we note that:

[a] person challenging the constitutionality of a statute bears a heavy burden of proving unconstitutionality[,] since all acts of the Legislature are presumed constitutional. To overcome the presumption of constitutionality, the party challenging the statute must demonstrate convincingly that the statute and the Constitution conflict.

Goggin, 2018 ME 111, ¶ 20, 191 A.3d 341 (alterations in original) (quotation marks omitted).

In determining whether a state tax placed upon individual income results in unconstitutional double taxation, we apply the internal consistency test:¹

By hypothetically assuming that every State has the same tax structure, the internal consistency test allows courts to isolate the effect of a defendant State's tax scheme. This is a virtue of the test because it allows courts to distinguish between (1) tax schemes that inherently discriminate against interstate commerce without regard to the tax policies of other States, and (2) tax schemes that create disparate incentives to engage in interstate commerce (and sometimes result in double taxation) only as a result of the interaction of two different but nondiscriminatory and internally consistent schemes. . . . The first category of taxes is typically unconstitutional; the second is not.

Comptroller of the Treasury v. Wynne, 575 U.S. 542, 562, 135 S. Ct. 1787, 1803 (2015).

If every state were to implement the scheme employed by the State of Maine taxing the entirety of distributions from TSPs, there would be no inherent discrimination against interstate commerce. The Maine Supreme Judicial Court has previously considered an almost identical situation in *Smith v. State Tax Assessor*, 2004 ME 120, 860 A.2d 387. Therein, the Taxpayers paid Massachusetts income taxes on the contributions to their IRA and SEP² accounts when the contributions were made. As is the case here, Maine taxed the distributions from the IRA and SEP at a later date. The taxpayers argued this was unconstitutional. The Court rejected this claim:

Maine income tax... was based on the taxpayers' reported federal adjusted gross income. In tracking the federal tax laws, both for the calculation of taxable income and for the allowance of tax deferral of contributions to IRA and SEP accounts, with income taxes to be imposed when the distribution occurs, Maine violated no provision of the United States Constitution.

¹ The external consistency test is not applied, generally, "for purposes of individual income tax inquiries, likely because of the established legal principle that residence in a state and the consequent enjoyment of the protection of its laws provide a basis for the taxation of individuals' income." See *Goggin v. State Tax Assessor*, 2018 ME 111, ¶ 28, 191 A.3d 341, 348.

² "Individual Retirement Accounts (IRAs) and Simplified Employee Pension Plans (SEPs) are deferred income accounts with qualifying contributions from income, up to specified amounts, exempt from federal and some state income taxes at the time of contribution, with those income taxes deferred to be imposed upon the contributions when they are withdrawn, usually after a person's retirement." *Smith v. State Tax Assessor*, 2004 ME 120, ¶ 1 n.1, 860 A.2d 387, 388; see also I.R.C. § 408.

Id., ¶ 11, 860 A.2d 387, 389-90. Accordingly, we cannot find that the Taxpayers have proved Maine’s tax scheme to be unconstitutional.³

Here, the Taxpayers’ difficulties arise because New Jersey is one of two states which has chosen to impose income tax upon contributions to Thrift Savings Plans.⁴ No adjustment is warranted on this basis. We uphold the Decision on Reconsideration in full.

III. Decision

Based on the law and evidence presented, we uphold the Decision on Reconsideration issued by MRS 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 from the Board’s decision in this matter to the Maine Superior Court, that party must do so within 60 days of receiving this decision.

³ We note that, because the New Jersey and Maine taxes were imposed for different tax years by different taxing authorities, the situation complained of does not meet the dictionary definition of double taxation for constitutional purposes. *See* BALLENTINE’S LAW DICTIONARY (3d ed. 1969); 51 Am J1st Tax § 284 (defining double taxation for constitutional purposes as “taxing twice, for the same purpose, by a tax of the same kind, in the same year, some of the property in the taxing district, without imposing the same levies upon all the property of the same kind in the district.”); *see also Smith v. State Tax Assessor*, 2004 Me. Super. LEXIS 24, *4.

⁴ The potential problems associated with taxation of Thrift Savings Plan contributions by New Jersey (and Pennsylvania) for individuals like the Taxpayers are well documented. *See, e.g.,* Ed Zumdorfer, How New Jersey and Pennsylvania Tax the TS, Serving Those Who Serve, (April 24, 2023), <https://stwserve.com/new-jersey-and-pennsylvania-tax-the-tsp/>, (“But if [former NJ or PA residents] retire to a state that has a state income tax, they will have to pay full state income tax on their traditional TSP withdrawals. They will not be eligible for a state income tax credit from the new resident state on the New Jersey or Pennsylvania income taxes they paid on the contributions.”) *see also*, S. Michael Chittendon, The Curious Case of New Jersey and Ms. Darcey: New Jersey Taxation of Nonqualified Deferred Compensation, Corporate Taxation (July / August 2020), <https://www.cov.com/-/media/files/corporate/publications/2020/07/the-curious-case-of-new-jersey-and-ms-darcey-new-jersey-taxation-of-nonqualified-deferred-compensation.pdf>.

BY ORDER OF THE BOARD

Date: _____, Chair/Member