

[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 and interest for tax year [year 1]. Specifically, MRS determined that the Taxpayer is entitled only to a credit for income taxes paid to another jurisdiction for the days the Taxpayer was physically present and working in that jurisdiction pursuant to 36 M.R.S.A. §§ 5142 & 5217-A. The Taxpayer disagrees, arguing that the tax scheme employed by Maine results in impermissible double taxation. Based on the applicable law and the evidence submitted, we uphold the assessment in full.

I. Background

For the period at issue, the Taxpayer was a Maine resident individual employed by the [City], New York office of [a corporation] headquartered in [City], Massachusetts. For the tax year [year 1], the Taxpayer worked 33 days at the New York location, and the Taxpayer spent the rest of the year—some 227 days—working remotely from home in Maine. The Taxpayer worked from home for the Taxpayer’s own convenience and not for the convenience of the Taxpayer’s employer.

For the tax year [year 1], the Taxpayer's employer reported all the Taxpayer's compensation as New York source income in accordance with New York State law.¹ Accordingly, the Taxpayer filed a New York State non-resident individual income tax return reporting a New York taxable income of \$[amount] and a New York State income tax of \$[amount]. The Taxpayer also filed a [year 1] Maine resident individual income tax return reporting a Maine adjusted gross income of \$[amount] and a Maine income tax of \$[amount]. Against this tax, the Taxpayer applied a nonrefundable credit of \$[amount] for taxes paid to other jurisdictions— that being New York—resulting in a net tax due to Maine of \$[amount].

In mid-[year 2], MRS sent the Taxpayer requests for information seeking the Taxpayer's out-of-state returns and breakdowns of where and when the Taxpayer's income was earned. The Taxpayer promptly replied that the Taxpayer had worked remotely in Maine for the entire year. In response, MRS adjusted the Taxpayer's [year 1] Maine return by removing the nonrefundable credit of \$[amount] for taxes paid to other jurisdictions and issued a Return Correction Notice stating the net tax and total amount due to be, as corrected, \$[amount]. The Taxpayer's representative replied by informing MRS that the Taxpayer had actually worked 33 out of 260 days in New York. In response, MRS issued a second Return Correction Notice adjusting the

¹ New York State law provides:

[i]f a nonresident employee... performs services for his employer both within and without New York State, his income derived from New York State sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within New York State bears to the total number of working days employed both within and without New York State.... However, any allowance claimed for days worked outside New York State must be based upon the performance of services which of necessity, as distinguished from convenience, obligate the employee to out-of-state duties in the service of his employer. In making the allocation provided for in this section, no account is taken of nonworking days, including Saturdays, Sundays, holidays, days of absence because of illness or personal injury, vacation, or leave with or without pay....

N.Y. Comp. Codes R. & Regs. tit. 20, § 132.18 (a).

nonrefundable credit for taxes paid to another jurisdiction from \$0 to \$[amount] and the net tax and total amount due to \$[amount].

Later, MRS issued an Information Notice to the Taxpayer, showing a tax due of \$[amount], interest of \$[amount], and penalties of \$[amount], with a credit of \$[amount] for the payment that accompanied the original return, and informing the Taxpayer of the right to request reconsideration of MRS' determination. The Taxpayer timely made that request. Following that request, MRS issued a Decision on Reconsideration that upheld its determination of tax and interest but abated the penalties in full. It also informed the Taxpayer of the right to appeal the decision on reconsideration to this Board. The Taxpayer timely appealed.

On appeal, the Taxpayer argues that MRS's denial of the nonrefundable credit for taxes paid to other jurisdictions results in impermissible double taxation. MRS disagrees. It is the Taxpayer's burden to show that the assessment is incorrect. 36 M.R.S.A. § 151-D(10)(F). We consider the matter on appeal de novo as to both facts and law. *Id.* § 151(2)(G).

II. Discussion

The Taxpayer argues that the Maine statutory scheme and the MRS worksheets supplied to assist taxpayers result in constitutionally impermissible double taxation of income by the State of Maine. We first discuss the Maine statutory scheme and worksheet before considering the constitutional arguments raised by the Taxpayer.

A. Maine Law

Annually, Maine imposes a tax “on the Maine taxable income of every resident individual of this State.” 36 M.R.S.A. § 5111. The Maine taxable income of an individual is equal to the individual's federal adjusted gross income with certain modifications provided by Maine law. *Id.* § 5121. Further, a resident is

allowed a credit against the tax otherwise due under this Part, excluding the [alternative minimum tax], for the amount of income tax imposed on that individual for the taxable year by another state of the United States... 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 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 [alternative minimum tax], 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.

Id. § 5217-A.

Like the Maine courts, “we look first to its plain meaning to give effect to the Legislature's intent,” and “we will not read additional language into a statute or treat words in a statute as meaningless and superfluous.” *Goggin v. State Tax Assessor*, 2018 ME 111, ¶ 12, 191 A.3d 341, 344. While we construe taxing statutes most strongly against the government, we construe a statute providing for a tax credit narrowly because “[s]uch special privileges are in conflict with the universal obligation of all to contribute a just proportion toward the public burdens.” *Id.* ¶¶ 13-14, 344-45 citing *City of Bangor v. Rising Virtue Lodge, No. 10, Free & Accepted Masons*, 73 Me. 428, 433 (1882). Accordingly, the taxpayer seeking the credit must show that it is “unmistakably” within the spirit and intent of the statute. *DaimlerChrysler Servs., N. Am., LLC v. State Tax Assessor*, 2003 ME 27, ¶7, 817 A.2d 862.

The Maine Law Court has described the application of Section 5217-A in the following terms:

Section 5217-A is complicated, but not ambiguous. The plain language of the statute makes clear (1) who is eligible to receive the tax credit, (2) what income

forms the basis of the credit, and (3) at what amount the credit is capped.

Warnquist v. State Tax Assessor, 2019 ME 19, ¶ 17, 201 A.3d 602, 606. As for the second prong of this description, Section 5217-A clearly indicates that the income that forms the basis of the credit be calculated using the provisions of 36 M.R.S.A. 5142, not the law of the other jurisdiction. *Id.* ¶ 19, 201 A.3d 606-07.

Section 5142 provides, in relevant part, that

the Maine adjusted gross income of a nonresident individual derived from or connected with sources in this State is the sum of the following amounts:

- A. The net amount of items of income, gain, loss, and deduction entering into the nonresident individual's federal adjusted gross income that are derived from or connected with sources in this State. . . and
- B. The portion of the modifications described in section 5122, subsections 1 and 2 that relates to income derived from or connected with sources in this State. . .

36 M.R.S.A. § 5142(1). Further, it provides that “[i]tems of income, gain, loss, and deduction derived from or connected with sources within this State are those items attributable to. . . [a] A business, trade, profession or occupation carried on in this State...” *Id.* § 5142(2). MRS agency rules² supply additional clarification stating “compensation received for personal services performed in Maine . . . is Maine-source income. Personal services compensation includes . . . wages [and] salaries.” 18-125 C.M.R., ch. 806.02(B). (“Rule 806”).³

² MRS is directed by statute to “administer and enforce the tax laws enacted under [Title 36] and under Title 29-A” and empowered to “adopt rules and require such information to be reported as necessary.” 36 M.R.S. § 112(1). Duly adopted agency rules are judicially enforceable. 5 M.R.S. § 8002(9). A taxpayer may challenge the validity of a rule adopted by MRS when making an appeal to the Board when the rule is applied in a decision on reconsideration. 36 M.R.S. § 151; *see also* 5 M.R.S.A. § 8058.

³ The Taxpayer challenges the validity of the Rule 806 only on constitutional grounds tangential to the Taxpayer’s argument against the statute which it explains. Thus, we need not consider the validity of Rule 806 separately. The standard of review for a challenge to the validity of a rule is contained in 5 M.R.S.A. § 8058(1), *see also Conservation Law Found. v. Dep’t of Envtl. Prot.*, 2003 ME 62, ¶ 21, 823 A.2d 551.

To assist Taxpayers in computing their Section 5217-A credit, MRS provides annually a worksheet entitled “Credit for Income Tax Paid to Other Jurisdiction Worksheet for Tax Year [year]” for use by Maine Taxpayers. The [year 1] version of this worksheet tracks the requirements of Section 5217-A:

Residents (excluding safe harbor residents) may claim a credit against Maine income tax for income tax paid to another jurisdiction if all the following conditions are met:

- 1) the other jurisdiction is another state . . . ;
- 2) the tax paid to the other jurisdiction is directly related to the income received during the tax year covered by this return . . . ; and,
- 3) the income taxed by the other jurisdiction is derived from sources in that jurisdiction. Note: Income earned from a business, trade, profession, or occupation carried on in Maine, including income earned while teleworking in Maine, is sourced to Maine.

...

Lines 2a through 2d. Income sourced to the other jurisdiction must be determined in the same way that a Maine nonresident calculates Maine-source income for purposes of Schedule NR or Schedule NRH. Note that generally income from intangible sources, such as interest, dividends, annuities, pensions, and gains or losses attributable to intangible personal property, received by a resident of Maine is Maine-source income. For a description of Maine-source income for nonresident individuals, see 36 M.R.S. § 5142 and Maine Rule 806.

[Year 1] Income Tax Paid to Other Jurisdiction Credit Worksheet, available at [citation omitted].

The Law Court has reviewed the tax year 2012 and 2013 worksheets provided by MRS for use by taxpayers and found “[i]n its entirety, the worksheet reflects the complexities of section 5217-A, but it does not contradict the statute, nor is it susceptible to multiple interpretations.”

Warnquist, 2019 ME 19, ¶ 21, 201 A.3d 602, 607.

Here, the Taxpayer worked a total of [number] days, [number] days outside of Maine, or 12.7% of the time, and [number] days inside of Maine, or 87.3% of the time. The total tax for the State of New York was \$[amount] and the total tax for the State of Maine was \$[amount] before application of the nonrefundable credits. The Taxpayer received a Maine nonrefundable

credit for taxes paid to New York in the amount of \$[amount], which constitutes 12.7% of the New York taxes due. Accordingly, we find no error in the application of Section 5217-A.⁴ *See Individual Taxpayer v. Me. Revenue Servs.*, BTA-2020-12 (Me. Bd. Tax App. July 19, 2021). Accordingly, we examine the issue of constitutionality below.

B. Constitutional Arguments

The Maine Law Court has well established that, in challenging the constitutionality of a state taxing statute, the taxpayer bears the burden to prove unconstitutionality:

[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, 346f (alterations in original) (quotation marks omitted). Generally, when considering the constitutionality of a state taxing statute, we apply what is known as the *Complete Auto Transit* test, which has been summarized by the Law Court as follows:

A tax on instrumentalities of interstate commerce must meet four requirements: (1) it can only be applied to an activity with a substantial nexus with the taxing state; (2) it must be fairly apportioned; (3) it cannot discriminate against interstate commerce; and (4) it must be fairly related to the services provided by the state.

John T. Cyr & Sons, Inc. v. State Tax Assessor, 2009 ME 52, ¶ 23, 970 A.2d 299 (quotation marks omitted), *citing Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977). We discuss each prong, in turn, below.

⁴ We note that the Taxpayer has also asked for an alternative apportionment pursuant to section 5211. However, section 5211 deals with apportionment of the net income resulting from the business activity of a taxpayer “other than a resident individual, estate, or trust...” 36 M.R.S.A. § 5211(1). As the Taxpayer here is a resident individual, section 5211 is inapplicable. Further, we cannot entertain arguments that section 5211 or a similar principle must be applied to the Taxpayer on equitable grounds as 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.

Here, the Taxpayer does not argue that there is an insufficient nexus between the Taxpayer and Maine in regard to the first prong of the *Complete Auto Transit* test. Indeed, for the period at issue, the Taxpayer was physically present in, and a resident of, the State of Maine. The courts have long held that physical presence is sufficient to create a substantial nexus with the taxing state. *See, e.g., National Bellas Hess, Inc. v. Dept. of Rev.*, 386 U.S. 753, 757 (1967).

The second prong of the *Complete Auto Transit* test requires that the tax at issue be fairly apportioned. This prong of the test, commonly referred to as the external consistency test, “examines the economic justification for the State's claim upon the value taxed, to discover whether a State's tax reaches beyond that portion of value that is fairly attributable to economic activity within the taxing State.” *Goggin*, 2018 ME 111, ¶ 28, 191 A.3d 341, 348. However, “[t]his test has not been applied 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....” *Id. citing Comptroller of the Treasury v. Wynne*, 575 U.S. 542, 566-68 (2015). Here, the fact that Maine has chosen to apportion the income of the Taxpayer based upon physical presence appears no more unfair than New York's decision to apportion the Taxpayer's income based upon the location of the Taxpayer's employer. Further, the Maine Statutory scheme provides a credit for the time the Taxpayer actually spent working in New York. Therefore, we cannot say that the Maine tax is unfairly apportioned. *See Individual Taxpayer v. Me. Revenue Servs.*, BTA-2020-12 (Me. Bd. Tax App. July 19, 2021). The Taxpayer has not shown the tax at issue to be unfairly apportioned.

The third prong of the *Complete Auto Transit* test requires that the tax at issue not discriminate against interstate commerce. This prong of the test, commonly referred to as the

internal consistency test, requires that statute in question “be such that, if applied by every jurisdiction, it would result in no more than all of the [individual’s] income being taxed.”

Gannett Co. v. State Tax Assessor, 2008 ME 171, ¶ 34, 959 A.2d 741, 752 (quotation marks and citations omitted).

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.

Wynne, 575 U.S. 542, 562 (2015). The Maine Law Court has previously considered Section 5217-A, albeit under different circumstances, and found that it passed the internal consistency test. *Goggin*, 2018 ME 111, ¶ 26, 191 A.3d 341, 348. Here, if every state adopted Section 5217-A, no more than the whole of the Taxpayer’s income would be taxed. The Taxpayer has not shown that the tax at issue discriminates against interstate commerce.

Finally, the fourth prong of the Complete Auto Transit test requires that the tax at issue be fairly related to the services provided by the state.

Courts have long held a fair relationship between the tax imposed and the services provided by a state does not require a dollar-for-dollar relationship between the amount of tax imposed and the value of the benefits conferred to the taxpayer. Indeed, such an analysis would be cost prohibitive. Instead, a tax must represent the taxpayer’s just share of the expense related to the operation of the jurisdiction.

See Corporate Taxpayer v. Me. Revenue Servs., BTA-2022-9 (Me. Bd. Tax App. August 8, [year 1]) (internal quotations omitted) citing *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 628-629 (1981). Here, the Taxpayer has enjoyed the benefits of state services, infrastructure,

law, and order in exchange for an effective tax rate of 6%. The Taxpayer has not shown that the tax at issue is not fairly related to the services provided by the State of Maine.

III. Decision

Based on the law and evidence presented, we do not find Section 5217-A and the accompanying MRS worksheets to be unconstitutional. We uphold the MRS decision on reconsideration 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, Mr. Tetteh may contact Maine Revenue Services at 207-624-9595 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 Mr. Tetteh with an updated amount of tax and any interest or penalties due at that time.

BY ORDER OF THE BOARD

Date: _____, Chair/Member