

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
WILLIAM AND PATRICIA LONGSON	:	DECISION
for Redetermination of a Deficiency or for	:	DTA No. 814583
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1992.	:	

Petitioners William and Patricia Longson, 1706 Kilruss Drive, Venice, Florida 34292-4310, filed an exception to the determination of the Administrative Law Judge issued on March 20, 1997. Petitioners appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Gary Palmer, Esq., of counsel).

Neither party filed a brief on exception, but chose to rely on briefs filed below. Oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision. Commissioner Pinto took no part in the consideration of this decision.

ISSUES

- I. Whether petitioners must accrue their entire gain from a 1991 installment sale of New Jersey property in 1992, the year in which they changed their residence from New York to Florida.
- II. Whether, for 1992, petitioners may properly accrue their New York State resident tax credit for any taxes that would be required to be paid to New Jersey in the future based on the installment sale.
- III. Whether petitioners have proven that the Division of Taxation administered the income tax statutes in an unconstitutional manner in this case and that petitioners' right to equal protection of the laws was violated.¹

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for finding of fact "3" which has

¹Although petitioners raised this constitutional argument in their petition, the Administrative Law Judge noted that they made no mention of it in either their written or oral presentations at hearing or their post-hearing submissions. The Administrative Law Judge, therefore, deemed the argument abandoned. Petitioners again raised the issue on appeal and, again, no legal argument was proffered to support it.

been modified. The Administrative Law Judge's findings of fact and the modified finding of fact are set forth below.

Petitioners resided in New York State during all of 1991. On February 7, 1991, petitioners sold certain real estate situated in the state of New Jersey on the installment method.²

On their 1991 Federal income tax return petitioners reported \$76,206.06 in capital gains, including a \$75,573.13 long-term capital gain on the payments received in 1991 from the installment sale of the New Jersey property.

On their 1991 IT-201, New York State Resident Income Tax Return, petitioners reported \$76,206.06 in capital gains. Petitioners filed an IT-112-R, New York State Resident Tax Credit, for 1991 wherein they calculated a credit of \$2,559.16 for New Jersey taxes paid, including taxes paid on the gain on the payments received in 1991 from the installment sale of the New Jersey property.

In April of 1992, petitioners moved to Florida. On their 1992 Federal income tax return petitioners reported \$15,167.04 in capital gains, including a \$10,467.80 long-term capital gain on the payments received in 1992 from the installment sale of the New Jersey property.

For the tax year 1992 petitioners' filed a New York State IT-203 Nonresident and Part-Year Resident Income Tax Return. Petitioners reported \$15,167.04 for the Federal amount of capital gains for the year and \$4,765.48 for the New York State amount. Petitioners filed an IT-112-R, New York State Resident Tax Credit, for 1992 wherein they calculated a credit of \$371.95 for New Jersey taxes paid, including taxes paid on the gain on the payments received in 1992 from the installment sale of the New Jersey property.³

We modify finding of fact "3" of the Administrative Law Judge's determination to read as follows:

²Although there is no direct evidence of the installment sale of the New Jersey property, the fact of the sale is not disputed by the Division of Taxation ("Division"). The date of the sale was inferred by the Administrative Law Judge from petitioners' 1991 Federal income tax return and the tacit agreement of the parties.

³It is unclear how petitioners determined the New York State amount of capital gains. The Division in its post hearing brief states that petitioners failed to report any capital gain resulting from the installment sale in their 1992 New York amount, and that they then claimed the entire amount of 1992 New Jersey taxes paid in relation to this transaction when calculating the credit. Petitioners respond that they claimed a proportionate share of both the income and the credit. However, the Division's calculations as set forth below simply recalculate petitioners' 1992 New York capital gains and subtract the \$4,765.48 reported by petitioners to reach the New York adjustment. Furthermore, the Division allowed the entire resident tax credit as calculated by petitioners for 1992. Therefore, the parties' discussion of this issue appears gratuitous.

On January 13, 1995, the Division issued a Statement of Proposed Audit Changes for 1992 to petitioners which set forth an amount due of \$19,235.54, exclusive of interest. The tax due was calculated

utilizing a several step process. First, the notice explained that an error had been made in petitioners' calculation of their New York capital gains. The notice set forth the proper calculation of petitioners' 1992 New York capital gains as follows:

"STOCK SALE OF 2/3/92	\$ 896.59
INSTALLMENT SALE GAIN	\$10,467.80
BALANCE	\$11,364.39
REPORTED	-4,765.48
NY ADJUSTMENT	\$ 6,598.91"

The notice explained that pursuant to Tax Law § 638(c)(1), petitioners were required to accrue the balance of the gain to be received from the installment sale in the resident period of the last year they were residents of New York. This adjustment was calculated as follows:

"INSTALLMENT SALE ACCRUAL ADJUSTMENT:

Total gain	\$339,154.46
less amount reported	
1991	-75,573.13
1992	-10,467.80
BALANCE ACCRUED	\$253,113.53"

The remainder of the statement simply calculates the tax due using the adjusted amount for New York capital gains of \$264,477.92 (\$6,598.91 plus \$253,113.53) and an adjusted Federal amount for capital gains including the accrual of \$268,280.57. These calculations resulted in the tax due of \$19,235.54.

The notice also explained that pursuant to Tax Law § 638(c)(4), if a bond or other acceptable security were filed with the Division, then petitioners could file each year thereafter as if they had remained residents of New York State. Petitioners disagreed with the Division as to the correct amount of the bond. The Division required that the bond be based on the \$19,213.00 in tax asserted. Petitioners argued that the bond should be based only on the \$2,955.14 that would be payable to New York State after receiving a credit for tax paid in the amount of \$16,257.86 to New Jersey. Because of this disagreement, petitioners declined to file a bond.

By letter dated March 17, 1995, Maria A. Hilligrass notified petitioners, inter alia, that they could still file a bond if they wished and once the bond was filed, the Division would adjust its assessment removing the accrual portion of the tax adjustments. No bond was ever filed.⁴

On May 8, 1995, the Division issued a Notice of Deficiency (Assessment number L-009965092) to petitioners in the amount of \$19,235.54 in tax, exclusive of interest.

On October 13, 1995, a Conciliation Order was issued recomputing the statutory notice to \$19,213.00 in tax due, exclusive of interest.

The Division of Tax Appeals received the petition in this matter on December 14, 1996.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

Petitioners argued that the plain meaning of the terms "losses" and "deductions" included the resident tax credit. As such, petitioners argued, they should have been able to accrue tax amounts payable to New Jersey as a credit against New York's tax. The Administrative Law Judge concluded that the term "credit" under the Tax Law is not a loss or deduction, noting that a deduction is an amount allowed to reduce income prior to applying the tax rate to determine the tax due and a loss is a type of deduction.

On the other hand, the Administrative Law Judge noted, a credit is an allowance against the tax, in other words, it reduces the tax liability. Because deductions (including losses) and credits are distinct and separate concepts, the Administrative Law Judge concluded that Tax Law former § 638 does not allow petitioners to accrue any credits they would have received for future payments of New Jersey taxes because credits are not losses or deductions.

The Administrative Law Judge found that Tax Law § 620 "was designed to protect New York residents from being subjected to double taxation" (*Matter of Smith v. New York State Tax Commn.*, 120 AD2d 907, 503 NYS2d 169), but Tax Law former § 638, in requiring accrual of installment sale income to petitioners' New York residency period in 1992, and not allowing petitioners to "accrue" future resident tax credits, was not contrary to the legislative intent of Tax Law § 620 to protect New York State residents from double taxation.

Petitioners could have avoided the accrual requirement of Tax Law former § 638 by filing a bond or other security in the amount of the deferred tax, but failed to do so. The Administrative Law Judge found petitioners' argument that the amount of such bond should have been calculated

by the Division to give them credit for the future taxes owed to New Jersey to be without merit.

ARGUMENTS ON EXCEPTION⁵

The Division argues that when petitioners changed their resident status in 1992 from New York to Florida, they were required to accrue and report items of income, gain, loss or deduction, including any unrealized income or gain from the installment sale on their final New York resident income tax return (Tax Law former § 638[c][1] and [2]; TSB-M-86-[3]-I). Petitioners agree that they were required to accrue to their New York period of residence in 1992 the entire gain on the installment sale of the property in New Jersey. But if that is the case, argue petitioners, they should also be allowed to similarly accrue as a resident tax credit against their New York tax all future tax amounts to be paid to New Jersey on the installment sale.

Petitioners argue that they are being penalized because they chose to move to Florida. As a result of their change in residence, they argue, New York is imposing the full tax of \$19,213.00 on the accrued total gain from the New Jersey installment sale income even though petitioners must still pay tax of \$16,257.86 to New Jersey on the same total gain. Had they remained New York residents, petitioners argue, they could take a resident tax credit against New York tax for the \$16,257.86 paid to New Jersey, leaving only \$2,955.14 in tax payable to New York. "Had we remained a resident [sic] of New York State until and including the year 2001, we would have paid a total of \$19,213.00 in taxes on this income from New Jersey" (Exhibit 2, p. 1). Of this total, petitioners argue, \$16,257.86 in tax would have been payable to New Jersey and the balance of \$2,955.14 in tax would have been payable to New York State.

The Division counters that under the special accrual rules of Tax Law former § 638(c), petitioners were required to accrue the entire gain from the installment sale on their final New York resident return. However, the Division urges, Tax Law former § 638(c) does not authorize petitioners to also accrue the total tax to be paid to New Jersey as a resident tax credit against New York's tax because that credit is allowed only for income tax imposed by another jurisdiction for the

⁵Since neither side has filed a brief on exception, we proceed on the assumption that each side is continuing to proffer the arguments raised below.

taxable year. Further, the Division argues, petitioners were not residents of New York after 1992. The Division points out that Tax Law former § 638(c)(4) permits a taxpayer to avoid the special accrual requirements of Tax Law former § 638(c)(1) and (2) if the taxpayer files a bond or acceptable security with the Division for the amount of the deferred tax (i.e., \$19,213.00) and then files a New York nonresident return every year on which they could have claimed the tax credit for the taxes paid to New Jersey each year as if they were still residents of New York.

Petitioners urged that the Division erred in computing the amount of the bond because it failed to take into account the taxes to be paid to New Jersey. For that reason, no bond was filed.

OPINION

Tax Law former § 638(c)(1), in effect during the year at issue, provides, as follows:

"[i]f an individual changes his status from resident to nonresident he shall, regardless of his method of accounting, accrue to the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly entering into his federal adjusted gross income for such portion of the taxable year or a prior taxable year under his method of accounting" (emphasis added).

Petitioners now acknowledge that they were required to accrue the entire gain to the resident portion of their 1992 New York part-year return. However, petitioners argue that the statute also requires accrual of all losses and deductions. Petitioners assert that losses and deductions include the resident tax credit for taxes paid to New Jersey after 1992. Accordingly, petitioners urge that after accruing the total gain on their installment sale to the resident portion of their 1992 return and calculating the tax due, they are entitled to deduct as a resident tax credit accrued amounts they will be required to pay as tax to New Jersey over the installment period, in the same manner as if they had remained residents of New York State.

Unfortunately, the statute does not authorize petitioners to accrue resident tax credits in 1992 for tax payments they may or may not make to New Jersey in the future. The Administrative Law Judge's determination adequately and properly dealt with these issues and we affirm her conclusions.

Petitioners argue that it is unconstitutional for New York and New Jersey to tax the gain

arising from the New Jersey installment sale. However, petitioners have offered no legal authority for this argument. We find no legitimate issue of constitutional dimension raised here. To the extent petitioners were required to pay tax to New York on the full gain from the installment sale, it is due to petitioners' failure or refusal to file a bond pursuant to the New York Tax Law.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of William and Patricia Longson is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of William and Patricia Longson is denied; and
4. The Notice of Deficiency dated May 8, 1995, as recomputed by the Conciliation Order dated October 13, 1995, is sustained.

DATED: Troy, New York
December 4, 1997

Donald C. DeWitt
President

Carroll R. Jenkins
Commissioner