

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
EARLE W. AND JUDITH A. KAZIS	:	DECISION
for Redetermination of a Deficiency or for Refund of	:	DTA NO. 817387
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1994.	:	

Petitioners Earle W. and Judith A. Kazis, 380 Park Avenue, Rye, New York 10580-1242, filed an exception to the determination of the Administrative Law Judge issued on July 12, 2001. Petitioners appeared by Shalik, Morris & Company, LLP (Irving Jankowitz, CPA). The Division of Taxation appeared by Barbara G. Billet, Esq. (Herbert M. Friedman, Esq., of counsel).

Petitioners filed a brief in support of their exception, the Division of Taxation filed a brief in opposition and petitioners filed a reply brief. Petitioners' request for oral argument was denied.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Division of Taxation correctly adjusted petitioners' resident tax credit for the tax year 1994 pursuant to Tax Law § 620(a).

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Petitioners are New York residents who filed a Form IT-201, New York State Resident Income Tax Return for tax year 1994 claiming a resident tax credit in the amount of \$67,081.00, computed on two Forms IT-112-R, New York State Resident Tax Credit. According to the return as filed, a portion of the credit, \$59,945.00, was derived from taxes paid to Massachusetts, and the remainder, \$7,136.00, was derived from taxes paid to Pennsylvania. Petitioners provided the Division with a copy of their Pennsylvania return filed for 1994, but neglected to include a copy of their Massachusetts return.

Petitioners owned a 9.43% interest in Northeast Motel Associates, a Tennessee partnership which conducted business in Massachusetts from 1978 to 1986, during which time the partnership did not file Massachusetts partnership tax returns. Likewise, petitioners did not report their proportionate share of partnership income in Massachusetts, inasmuch as they were not provided the information by the partnership to do so.

When real estate connected to the Massachusetts interest was sold, the State of Massachusetts became aware that Northeast Motel had not filed tax returns in that State. The Massachusetts Department of Revenue issued a Notice of Assessment to petitioner, Earle Kazis, dated April 13, 1994, for income tax assessed in the amount of \$63,235.00, plus interest and penalty, less payments and credits, for a balance due of \$147,360.13. Petitioners paid the Massachusetts liability on or about September 14, 1994, and subsequently contested the same.

A portion of the resident tax credit claimed by petitioners on their 1994 New York State resident income tax return (\$59,945.00) was, in part, based upon the payment for the income taxes due resulting from the unfiled partnership returns.

The Division of Taxation ("Division") issued a Statement of Proposed Audit Changes dated December 29, 1997 to petitioners asserting tax due in the amount of \$48,706.00, plus interest in the amount of \$11,749.91, adjusted for payments or credits of \$7.17, for a balance due in the amount of \$60,448.74. It explained, in pertinent part, as follows:

You made an error in computing your resident tax credit.

Based on information received under a reciprocal tax agreement with the State of MASSACHUSETTS, the resident credit claimed on your New York State return has been adjusted and your New York State Tax has been recomputed accordingly.

Your New York taxes cannot be adjusted without a statement from the State of MASSACHUSETTS showing the correct amount of taxes payable to that state.

A resident credit may only be claimed for the tax year in which the credit was earned.

As a result, you have been allowed a total resident credit in the amount of \$18,375.00 which consists of \$11,239.00 in tax paid to Massachusetts and \$7,136.00 in tax paid to Pennsylvania.

The Division issued a Notice of Deficiency dated March 2, 1998, assessing additional tax due in the amount of \$48,707.00, plus interest, adjusted for credits and payments, for a balance due of \$61,289.13.

A Conciliation Conference was held to review this matter on July 13, 1999, and by Conciliation Order CMS No.168459, dated September 10, 1999, the Division sustained the statutory notice.

A timely petition was filed on November 1, 1999, contesting the Order.

Petitioners introduced into evidence a Massachusetts Department of Revenue Notice of Assessment, which indicated income tax due for periods ending from December 31, 1978 through December 31, 1986, and a copy of petitioners' check dated September 14, 1994, indicating payment of the Massachusetts liability.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge noted that Tax Law § 620(a), which contains the resident tax credit, provides for a credit against tax due for any tax imposed for the taxable year by another state. The Administrative Law Judge determined that the taxes paid by petitioners to the State of Massachusetts in 1994, representing tax liabilities for the years 1978 to 1986, were not eligible for the resident tax credit. Petitioners argued that they were not aware of the tax liability until 1994 and, therefore, the assessment of tax by the State of Massachusetts and their payment of said taxes in 1994 was the assessment and payment of an original liability, i.e., imposed for the taxable year 1994. The Administrative Law Judge rejected this argument, saying that the tax was a liability for prior years and, therefore, not eligible for the credit.

ARGUMENTS ON EXCEPTION

Petitioners argue that the Administrative Law Judge failed to consider their argument that they could not have paid the taxes or received a credit in the years they were due because they were not made aware of their liability.

Petitioners contend that the Administrative Law Judge's interpretation of the law and application of the regulations are unjust. Petitioners also contend that if the law and regulations

are not supportive of their argument, then this Tribunal should provide equity to assure a just result.

The Division urges that the Administrative Law Judge's determination be affirmed. The Division argues that the law and regulations clearly state that the credit is allowed only for taxes imposed by another state for the same taxable year. Petitioners submitted no proof of taxes paid to Massachusetts in the year 1994, only payment of an assessment for tax years 1978 to 1986. As a result, the Division maintains petitioners have demonstrated no right to the credit in the sum claimed, as provided by the Tax Law and regulations.

OPINION

We find that the Administrative Law Judge completely and correctly dealt with the issue presented and we affirm the determination for the reasons set forth therein.

Further, we agree that taxes paid to Massachusetts in 1994 for liabilities which accrued in tax years 1978 to 1986 are not eligible for the resident tax credit against the 1994 taxes due (*see*, Tax Law § 620[a]; 20 NYCRR 120.4[c]). Petitioners appear to believe that because they operate on a cash basis and not an accrual basis they should be allowed to take a credit for *any* taxes they paid to Massachusetts in 1994. However, the statute does not support such an interpretation. Tax Law § 620(a) states that a credit will be allowed for taxes imposed “for *the* taxable year” by another state, not “for *any* taxable” year. Since petitioners have offered no support for such an interpretation, we must defer to the plain language of the statute.

The court is obliged to construe statutory language literally where it expresses the evident intent of the Legislature, and the court cannot disregard the plain words of a statute even in favor of what may be termed an equitable construction, in order to extend it to some supposed policy not included in the act (McKinney's Statutes § 94).

Petitioners have indirectly asked for equitable relief on the basis of a general claim that justice will not be served if they are denied this credit. We believe that the law is clear and dispositive of this case and that petitioners have alleged no reason or exceptional circumstances for this Tribunal to invoke equity to prevent a substantial injustice, i.e., estop the Division from asserting liability pursuant to Tax Law § 602(a) (*see, Matter of Sheppard-Pollock, Inc. v. Tully*, 64 AD2d 296, 409 NYS2d 847, *citing Matter of Wolfram v. Abbey*, 55 AD2d 700, 388 NYS2d 952; *cf., Matter of Harry's Exxon Serv. Sta.*, December 6, 1988 [wherein it was found that exceptional facts and circumstances justified using the doctrine of estoppel to prevent the Division from acting in its governmental capacity]).

Further, it is noted that petitioners never submitted their 1994 Massachusetts income tax return to substantiate their alleged credit as required by 20 NYCRR 120.1(b)(1), while they did submit their Pennsylvania return to establish taxes paid to that jurisdiction for the year 1994. The indication is that petitioners knew the rule and their obligation to submit a copy of their Massachusetts income tax return for 1994, but ignored it in favor of an equity appeal, since their Massachusetts return did not substantiate their claim for credit. As stated, the facts of this matter simply do not warrant equitable relief.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Earle W. and Judith A. Kazis is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Earle W. and Judith A. Kazis is denied; and

4. The Notice of Deficiency, dated March 2, 1998, is sustained.

DATED: Troy, New York
May 16, 2002

/s/Donald C. DeWitt

Donald C. DeWitt
President

/s/Carroll R. Jenkins

Carroll R. Jenkins
Commissioner

/s/Joseph W. Pinto, Jr.

Joseph W. Pinto, Jr.
Commissioner