

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
CHARLES T. MILLER	:	DETERMINATION
	:	DTA NO. 817018
for Redetermination of a Deficiency or for	:	
Refund of New York State Personal Income Tax under	:	
Article 22 of the Tax Law and New York City	:	
Personal Income Tax under the Administrative Code	:	
of the City of New York for the Year 1994.	:	
	:	

Petitioner, Charles T. Miller, 120-17 142 Place, Jamaica, New York 11436-1410, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under the Administrative Code of the City of New York for the year 1994.

A small claims hearing was held before Dennis M. Galliher, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on January 24, 2002 at 2:45 P.M., with all documents to be submitted by March 24, 2002, which date began the three-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Max Wyszomirski).

ISSUE

Whether petitioner has established entitlement to a resident credit, per Tax Law § 620(a), based upon income tax paid to another jurisdiction.

FINDINGS OF FACT

1. The Division of Taxation (“Division”) issued to petitioner, Charles T. Miller, a Notice of Deficiency dated January 19, 1999 asserting New York State and New York City personal income tax due for the year 1994 in the respective amounts of \$1,885.00 (NYS) and \$1,087.00 (NYC), plus penalty and interest.

2. A previously issued Statement of Proposed Audit Changes, dated November 23, 1998, indicates that the foregoing deficiency was calculated based on petitioner’s reported Federal adjusted gross income of \$39,059.00, less allowances for the New York standard deduction (\$7,000.00) and for dependent exemptions (\$2,000.00), to arrive at New York State and New York City taxable income of \$30,059.00. The tax due thereon was calculated on the basis that petitioner was taxable as a resident of New York State and New York City. The statement indicates that the Division had no record of a New York return being filed for petitioner for 1994, and that petitioner’s Federal adjusted gross income (the starting point for the Division’s calculations) was determined based upon petitioner’s Federal income tax return for 1994.

3. Petitioner challenged the Division’s notice, asserting that he worked in New Jersey in 1994, and paid tax on his earnings to New Jersey. Petitioner therefore took the position that he was entitled to a credit against any New York liability, based on the taxes he paid to New Jersey.¹

4. Petitioner provided no information at hearing to establish the amount of income he earned which was subjected to tax by New Jersey in 1994, or the amount of income tax he paid to New Jersey for such year. Petitioner requested and was afforded a period of two months,

¹ This matter initially involved two tax years, to wit, 1993 and 1994. However, by a Stipulation for Discontinuance dated April 27, 2000, and a following Order of Discontinuance dated May 11, 2000, the dispute for the year 1993 was concluded, leaving only 1994 at issue in this proceeding.

post-hearing, to obtain and submit a copy of the New Jersey personal income tax return he allegedly filed for 1994, as well as any related information such as Forms W-2 from his New Jersey employer for such year, in support of his claim for a resident credit against his New York liability. No such information was submitted, post-hearing, by petitioner.

CONCLUSIONS OF LAW

A. Tax Law § 620(a) provides a credit for the income tax of another state, as follows, in pertinent part:

A resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States, a political subdivision of such state, . . . , upon income both derived therefrom and subject to tax under this article.

B. 20 NYCRR 120.4(c) and (d) provide, in part:

(c) The income tax imposed by the other jurisdiction means the total income tax payable thereto for the taxable year . . .

* * *

(d) . . . Thus, the resident credit against ordinary tax is allowable for income tax imposed by another jurisdiction upon compensation for personal services performed in the other jurisdiction, on income from a business, trade or profession carried on in the other jurisdiction, and income from real or tangible personal property situated in the other jurisdiction.

C. There is no dispute that petitioner might have been entitled to a resident credit based on any income taxes he paid to New Jersey. However, he has not provided any information to establish the dollar amount of any such taxes paid to New Jersey. In fact, the record contains no evidence that petitioner paid any taxes to New Jersey, or that he filed a tax return with such state, for the year 1994. As a result, petitioner has failed to meet his burden of substantiating entitlement to a resident credit. In the same manner, petitioner has provided no evidence to support his claims that he was taxable as a resident of New Jersey but not as a resident of New

York for 1994, and that the Division failed to allow certain (unspecified) deductions and thus incorrectly calculated petitioner's New York tax liability for 1994. Accordingly, there is no basis upon which to modify the Notice of Deficiency at issue herein.

D. The petition of Charles T. Miller is hereby denied and the Notice of Deficiency dated January 19, 1999 is sustained.

DATED: Troy, New York
June 13, 2002

/s/ Dennis M. Galliher
PRESIDING OFFICER