

June Nerber and Peter Nerber,

Petitioners

v.

DECISION AND ORDER

State Tax Assessor,

Respondent

This matter is before the Court on Petitioners' M.R. Civ. P. 80C appeal from the assessment of Respondent State Tax Assessor as to Petitioners' tax liability for 2004 and 2005. In lieu of an evidentiary hearing, the parties filed a Joint Stipulation of Facts, which incorporated several exhibits.

On April 30, 2009, the parties presented oral argument on the appeal. Attorney David Levesque represented the Petitioners. Assistant Attorney General Kelly Turner represented the Respondent.

Factual Background

At all pertinent times, Petitioners have been residents of Maine. Because of their resident status, Petitioners were required to file State income tax returns for 2004 and 2005. In both years, Petitioners claimed a tax credit for taxes paid to the Commonwealth of Massachusetts, which taxes were related to the sale of property held by the Valentine Liquidating Trust, a trust formed under the laws of Massachusetts (the Trust).¹ Petitioner Peter Nerber held a 15% beneficial interest in the Trust.

In 2004, Massachusetts imposed the tax on the Trust. For the 2005 tax year, Massachusetts required that the Trust withhold taxes that were owed by non-resident beneficiaries. Petitioner Peter Nerber was a non-resident beneficiary of the Trust.

¹ In 2004, the trust sold real estate resulting in capital gains of \$3,402,659. In 2005, the trust sold real estate that resulted in capital gains of \$227,302.

In July 2007, the Maine Revenue Service notified Petitioners that it disallowed the credit that they claimed for taxes paid to Massachusetts, and assessed a tax in the amount of \$27,062 for 2004 and \$646 for 2005. The Maine Revenue Service also added interest to the amount owed by Petitioners.

Upon review of the assessment, Petitioners asked the Maine Revenue Service to reconsider the assessment. After requesting and receiving additional information from Petitioners, the State Tax Assessor upheld the assessments.

Discussion

In claiming the credit for taxes paid to Massachusetts, Petitioners cite 36 M.R.S. § 5217-A, which provides in pertinent part:

A resident individual is allowed a credit against the tax otherwise due ... for the amount of income tax imposed on that individual for the taxable year by another state of the United States ...

Respondent disallowed the 2004 credit because the tax was imposed on and paid by the Trust. In addition, despite the fact that the 2005 tax to Massachusetts was withheld by and paid by the Trust based upon amounts owed by Petitioner Peter Nerber, Respondent did not permit Petitioners to claim the credit in 2005. Respondent reasoned that because Petitioner Peter Nerber did not file a 2005 income tax return in Massachusetts, the amount withheld and paid was not “imposed” as contemplated by the statute.

When interpreting a statute, the Court must determine the intent of the legislature by first looking to the plain meaning of the statutory language. *Foster v. State Tax Assessor*, 1998 ME 205, ¶ 7, 716 A.2d 1012, 1014. When a statute provides a tax credit, the person seeking the credit must show that it is “unmistakably within the spirit and intent of the statute.” *DiamlerChrysler v. State Tax Assessor*, 2003 ME 27, ¶ 7, 817 A.2d 862, 864 (citing, *Foster v. State Tax Assessor*, 1998 ME 205, ¶ 8, 716 A.2d 1012, 1015). The issue in this case is, therefore, whether Petitioners have demonstrated that the claimed credit is “unmistakably within the spirit and intent of the statute.”

A. 2004

Although Petitioners did not pay 2004 income taxes to Massachusetts, Petitioners maintain that they are entitled to a credit for the amounts paid by the Trust. More specifically, Petitioners

contend that because the trustee holds the property solely for the beneficiaries, the tax on trust property is in essence a tax on the beneficiaries. That is, Petitioners argue that because the tax is paid from the amount to which Petitioners are entitled under the terms of the Trust, the Court should determine that within the meaning of 36 M.R.S. § 5217-A, the Massachusetts tax was imposed upon Petitioner Peter Nerber and, therefore, Petitioners are entitled to the claimed tax credit.

To determine whether Petitioners are entitled to the credit, the Court must determine the legislature's intent in its enactment of 36 M.R.S. § 5217-A. As mentioned above, in interpreting the statute, the Court first looks to the plain language of the statute. *Foster v. State Tax Assessor*, 1998 ME 205, ¶ 7, 716 A.2d 1012, 1014. The plain language of the statute provides that the credit is available to an *individual* upon whom a tax is imposed by another state. 36 M.R.S. § 5217-A. Massachusetts imposed the tax upon the trust, which paid the tax. Petitioner Peter Nerber did not incur, nor pay the tax. Under the plain language of statute, therefore, Petitioners are not entitled to the tax credit. Had the legislature intended for the credit to extend to an individual whose beneficial interest from or in an entity (e.g., partnership, trust, corporation) might be adversely affected as the result of an out of state tax imposed upon the entity, the legislature presumably would have used more expansive language in defining those to whom the credit is available.

Petitioners' argument that the Court should permit Petitioners to claim the credit as such a result would be within "spirit and intent" of the statute is also unavailing. Through this argument, Petitioners basically contend that whenever the out of state tax has an *effect* on an individual similar to the effect of a tax imposed on the individual, the individual should be entitled to claim the credit regardless of the person or entity upon which the tax is imposed. Not only would such an interpretation ignore the plain language of the statute, but it would also require Respondent and the courts to apply an uncertain standard. Simply stated, the Court does not believe that the legislature intended such uncertainty. To the contrary, through its use of a common, simple term (i.e. individual), the legislature unambiguously defined the scope of credit. The Court concludes, therefore, that Petitioners have failed to demonstrate that the claimed credit was "unmistakably within the ... intent of the statute." *DiamlerChrysler v. State Tax Assessor*, 2003 ME 27, ¶ 7, 817 A.2d 862, 864 (citing, *Foster v. State Tax Assessor*, 1998 ME 205, ¶ 8, 716 A.2d 1012, 1015).

B. 2005

The record establishes that in 2005, in accordance with Massachusetts law, the Trust withheld and paid to Massachusetts taxes owed by Petitioner Peter Nerber on the income that he derived from the Trust. In this respect, tax year 2005 differs from tax year 2004, where the tax was imposed on the Trust. Despite this difference, Respondent also disallowed the credit for 2005. According to Respondent, a tax was not imposed by Massachusetts as contemplated by the statute because Petitioners did not file a Massachusetts income tax return. In other words, Respondent contends that without the filing of an income tax return, Petitioners are not entitled to the credit because the amount of the tax imposed on Petitioner remains unknown.

Petitioners argue that the statute does not require the filing of an income tax return in the foreign state as a prerequisite to the Petitioner's ability to claim the credit. In fact, on this record, the Court cannot determine whether in fact Petitioners were required to file a Massachusetts income tax return for 2005.² For Respondent to prevail on this issue, the Court would, therefore, have to construe the statute to impose a prerequisite (i.e., the filing of the tax return) to one's ability to claim the credit that the legislature did not explicitly require, and which the Petitioners might not be obligated to perform under Massachusetts law.

In addition, the Massachusetts law pursuant to which the tax was paid is instructive. The pertinent statute provides in relevant part, "[t]he income received by trustees or other fiduciaries described [in this section] shall be subject to the taxes *imposed* by this chapter ..." Mass. Gen. Laws ch. 62, § 10(a) (emphasis added). Section 10(g) requires the Trust to "deduct and withhold from [the beneficiary's] income a tax at the rate applicable to income of that class." The withholding and payment of the tax by the Trust is not discretionary under Massachusetts law. In this way, the tax was certainly one that was "imposed" by Massachusetts.

In short, given that the taxes were withheld and paid pursuant to a requirement of Massachusetts law (i.e., imposed by Massachusetts law), and in the absence of any evidence or

² If Petitioners were not required to file an income tax return in Massachusetts, under Respondent's argument, neither Petitioners, nor any one similarly situated would be entitled to claim the credit despite the fact that they incurred and paid income taxes in another state. Such a result would be inconsistent with the intent of 36 M.R.S. § 5217-A. To the extent that Respondent is concerned that a taxpayer could reduce the taxpayer's tax liability to Maine by paying more taxes than is required to the foreign state, the Court is not aware of any limitation on Respondent's ability to disallow the credit claimed, or a portion thereof, where the taxes paid to the foreign state were in excess of the amount required by (i.e., imposed by) the foreign state.

persuasive authority to suggest that a tax is not “imposed” until the filing of an income tax return, the Court concludes that the tax was imposed on Petitioner Peter Nerber as contemplated by 36 M.R.S. § 5217-A.

Conclusion

Based on the foregoing analysis, the Court finds and orders as follows:

1. The Court denies Petitioners’ appeal pursuant to M.R. Civ. P. 80C of the Respondent’s disallowance of a tax credit pursuant to 36 M.R.S. § 5217-A for the 2004 tax year, and affirms Respondent’s decision.

2. The Court sustains Petitioners’ appeal pursuant to M.R. Civ. P. 80C of the Respondent’s disallowance of a tax credit pursuant to 36 M.R.S. § 5217-A for the 2005 tax year. The Court orders that Petitioners are entitled to a credit on their 2005 Maine income tax return for the amount of taxes owed by Petitioner Peter Nerber, which amount the Trust withheld and paid.

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Decision and Order into the docket by reference.

Date: 5/21/09



Justice, Maine Business & Consumer Docket