STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
IRWIN AND PHYLLIS NATHAN	:	DECISION DTA NO. 820410
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 2000.	:	

Petitioners Irwin and Phyllis Nathan, 121B North Country Road, Mount Sinai, New York 11766-1503 filed an exception to the determination of the Administrative Law Judge issued on October 5, 2006. Petitioners appeared pro se. The Division of Taxation appeared by Daniel Smirlock, Esq. (Margaret T. Neri, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a letter stating that it would not be filing a brief in opposition. Petitioners filed a reply letter. Oral argument was not requested.

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

ISSUE

Whether it was error for the Division of Taxation to consider non-New York source individual retirement account distributions to determine the tax rate that is imposed on New York source income.

FINDINGS OF FACT

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

Petitioners, Irwin and Phyllis Nathan, filed a Nonresident and Part-Year Resident Income Tax Return for the year 2000. On this return, petitioners reported Federal adjusted gross income in the Federal amount column and New York State amount column of $147,962.00 and $110,971.00, respectively. Petitioners also reported New York adjusted gross income in the Federal amount column and the New York State amount column of $109,506.00 and $74,116.00, respectively.

The Division of Taxation ("Division") issued a Statement of Proposed Audit Changes, dated October 2, 2003, which explained that New York State exchanges information with the Internal Revenue Service ("IRS") and that adjustments were made to petitioners' New York tax liability based upon a comparison of the Federal information with petitioners' New York return. The Division explained that information provided by the IRS showed that petitioners' IRA distribution for the year 2000 was $392,911.00 and that this amount should have been entered on the New York return in the Federal amount column. Information from the same source also showed that petitioners' Federal adjusted gross income for the year 2000 was $467,961.00 and that this amount should have been reported in the Federal amount column of petitioners' New York income tax return. The Division then recomputed petitioners' New York State personal income tax liability on the basis of the information provided by the IRS. No adjustment was made to petitioners' New York source income. The statement explained that the amount of allocated New York State tax was calculated by multiplying petitioners' base tax by the income percentage. All of petitioners' income was included in computing the base tax. However,

petitioners were only taxed on the income from New York State sources. According to the statement, the amount of tax due was $3,159.57 plus interest in the amount of $569.65 for a balance due of $4,089.22.

Petitioners paid $4,932.00 and filed a Claim for Credit or Refund of Personal Income Tax in the amount of $4,115.00 plus interest. The claim stated that Public Law 104-95 prohibited state taxing authorities from using nonresident IRA distributions to compute the amount of state taxes due.

On or about June 25, 2004, the Division issued a Notice of Disallowance which advised petitioners that their claim for refund was denied. The notice explained that petitioners were required to figure a base tax as if they were full-year New York residents. They were then directed to multiply the base tax by a fraction whose numerator is income from New York sources and whose denominator is Federal adjusted gross income. Accordingly, the Division directed that the items of income in the Federal amount column had to be entered on the New York income tax return exactly as they appeared on the Federal return.

Petitioners filed a request for a conciliation conference. In a Conciliation Order dated February 4, 2005, the request was denied and the statutory notice was sustained.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge pointed out that, pursuant to Tax Law § 601(e), New York State imposes tax on the income from New York sources of a nonresident individual and that such tax imposed is equal to the tax imposed upon a New York resident for the full year, reduced by certain credits, and then multiplied by the New York source fraction. Petitioners herein disagreed with the calculation of the fraction as set forth in the statute because

their tax liability was determined by using the amount of their pension income received during the period of nonresidency which they claim is impermissible.

The Administrative Law Judge stated that this argument has been raised several times in the past and he noted that based upon ***Brady v. New York*** (80 NY2d 596, 592 NYS2d 955, ***cert denied*** 509 US 905, 125 L Ed 2d 692), New York's tax scheme is applied in a nondiscriminatory manner and only to New York source taxable income. As such, it was proper for the Division to take into account petitioners' non-New York taxable income in order to determine the tax rate. Thus, the Administrative Law Judge sustained the Notice of Disallowance issued to petitioners.

ARGUMENTS ON EXCEPTION

In their exception, petitioners argue that the Administrative Law Judge improperly relied on ***Brady*** for the facts in this case. Petitioners explain that Mr. Brady was a non-resident individual who earned both New York State and non-New York State income during the entire tax year which is a distinguishing factor from this case. Moreover, petitioners maintain that including the pension income in determining the tax rate is identical to taxing such income which is unconstitutional.

The Division stated its agreement with the determination of the Administrative Law Judge in every respect and requests that such determination be sustained.

OPINION

The argument set forth by petitioners has been considered by us before. Petitioners characterize that the taxing scheme by New York State is basically one that involves double taxation in contravention of the Due Process Clause of the United States Constitution. We reject this position and find it to be without merit.

Relying on section 114(a) of title 4 of the United States Code, petitioners argue that Public Law 104-95 provides that no State may impose an income tax on any retirement income of a non-resident individual. However, in this case, New York State is not taxing any portion of petitioners' pension income. The statute mandates that in determining tax liability, all income of petitioner is used in order to determine the applicable tax rate. Once the New York source fraction is established, such fraction was applied only to petitioners' New York source income which does not include the pension income (***see***, ***Matter of Dean***, Tax Appeals Tribunal, October 28, 1999).

We agree with the Administrative Law Judge that this argument has also been rejected by the Court in ***Brady***. In addressing New York State's statutory tax scheme, the Court held that "[t]his system does not implicate the State or Federal Constitution so long as the rates are applied, as here, in a nondiscriminatory manner and only to taxable New York income" (***Brady v. New York***, ***supra***, 592 NYS 2d 955, 960). Thus, we sustain the determination of the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that.

1. The exception of Irwin and Phyllis Nathan is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Irwin and Phyllis Nathan is denied; and

4. The Notice of Disallowance, dated June 25, 2004, is sustained.

DATED: Troy, New York
July 5, 2007

/s/ Charles H. Nesbitt
Charles H. Nesbitt
President

/s/ Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/ Robert J. McDermott
Robert J. McDermott
Commissioner