

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
EARLE W. AND JUDITH A. KAZIS	:	DETERMINATION
	:	DTA NO. 817387
for Redetermination of a Deficiency or for Refund of	:	
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 a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 1994.

A hearing was held before Catherine M. Bennett, Administrative Law Judge, at the offices of the Division of Tax Appeals, State Office Building, Veterans Memorial Highway, Hauppauge, New York 11787, on August 21, 2000, at 10:30 A.M., with all briefs to be submitted by February 9, 2001, which date began the six-month period for the issuance of this determination. Petitioner appeared by Shalik, Morris & Company, LLP (Irving Jankowitz, CPA). The Division of Taxation appeared by Barbara G. Billet, Esq. (Herbert Friedman, Esq., of counsel).

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

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

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

8. Petitioners introduced into evidence the Massachusetts Department of Revenue Notice of Assessment, which shows income tax due for periods ending from December 31, 1978

through December 31, 1986, and a copy of petitioners' check dated September 14, 1994, showing payment of the Massachusetts liability.

SUMMARY OF THE PARTIES' POSITIONS

9. Petitioners argue that the Division is required to inquire into the laws of other states and jurisdictions to choose the most effectual and equitable method of taxation in order to avoid duplication and conflict of taxation. Petitioners maintain that since they did not know and could not have known about the liability prior to 1994, paid the liability to Massachusetts in 1994 when it was first assessed, and are cash basis taxpayers, that they are entitled to the resident credit provided by New York State Tax Law.

10. The Division takes the position that it properly adjusted petitioners' resident tax credit based upon Tax Law § 620(a) and applicable regulations.

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, the District of Columbia or a province of Canada, upon income both derived therefrom and subject to tax under this article (emphasis supplied).

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.

B. The resident credit is allowed for any income tax imposed for the tax year by another jurisdiction on income derived from sources named above. The evidence presented indicates that the source of the property was such that Massachusetts properly imposed taxes unpaid from years 1978 to 1986. The only question is whether once such taxes due were identified to petitioners, whether payment of such taxes to another jurisdiction in a later tax year (1994) made them eligible for the resident tax credit permitted by the New York Tax Law for the year in which the tax was paid.

Petitioners argue that 1994 was the first time they were aware of the tax liability. They assert that the Massachusetts Notice of Assessment represents the original liability, not a redetermination of an original liability, and the liability was paid in 1994. The Notice may be the first computation of such original liability, however, it is the liability of the prior tax years during which the Massachusetts income tax accrued, but remained unpaid. The fact that petitioners first learned of the liability in 1994, and paid it in that year, does not entitle them to a credit not otherwise permitted by law. The New York resident tax credit clearly refers to a credit for the current year's liability for income tax imposed by another jurisdiction for the same tax year (Tax Law § 620(a); 20 NYCRR 120.4[c]). Petitioners' arguments are, therefore, without merit.

The resident credit is a means to prevent double taxation and had the Massachusetts returns been timely filed, petitioners would have been able to take full advantage of the credit as permitted by law on any eligible income upon which taxes were imposed by both New York and Massachusetts. Accordingly, the Division properly adjusted the resident tax credit for 1994, and issued an assessment for the disallowed portion.

C. The petition of Earle W. and Judith A. Kazis is denied, and the Notice of Deficiency dated March 2, 1998 is hereby sustained.

DATED: Troy, New York
July 12, 2001

/s/ Catherine M. Bennett
ADMINISTRATIVE LAW JUDGE