STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2015-15

[INDIVIDUAL TAXPAYERS],

Petitioners

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayers (the "Taxpayers")] appeal from an assessment of Maine income tax made by Maine Revenue Services ("MRS") for [year 3] and [year 4], disallowing a portion of their claimed credit for taxes paid to [Province], [Country],[1] in those years. Based on the evidence presented and the applicable law, we uphold the assessment in full.

I. Background

At all relevant times, [the Taxpayers] were Maine residents who derived rental income from two properties they owned in [Province], [Country]. Unlike taxation of rental income under the Internal Revenue Code ("IRC"), [Province] imposed a tax on the gross receipts from the rental of the [Taxpayers]' [Province] properties during the period at issue, without deduction of expenses. The [Taxpayers] correctly prepared their Federal individual income tax returns for the subject tax years, including only the net income derived from their [Province] properties in their federal adjusted gross income. As a result, the portion of the [Taxpayers]' *net* [Province] income included in their federal adjusted gross income each year was less than their *gross* income taxed by [Province].

[1] [Province] is a subdivision of [Country] analogous to a state of the United States.

After correctly preparing their federal returns for [year 3] and [year 4], the [Taxpayers] incorrectly prepared their corresponding Maine income tax returns by claiming as a credit against their Maine income tax liability the full amount of tax they paid to [Province] on their gross rental receipts. Upon reviewing the [Taxpayers]' filed Maine returns, MRS disallowed that portion of the credit for taxes paid to [Province] on income that was not includable in the [Taxpayers]' Maine adjusted gross income. MRS then issued the subject assessment for understated Maine income tax. On reconsideration requested by the [Taxpayers], MRS upheld the assessment in full.[2]

The issues presented on appeal are: (1) whether the credit for taxes paid to another jurisdiction under 36 M.R.S. § 5217-A is limited to taxes paid on income taxed both by Maine and the other jurisdiction; and (2) whether the penalties and interest contained in the assessment should be waived or abated. An Appeals Conference was held, at which the [Taxpayers] and MRS presented arguments and evidence in support of their respective positions. The [Taxpayers] have the burden to show that it is more likely than not that the assessment is incorrect. 36 M.R.S. § 151-D(10)(F).

II. Discussion

A. Credit for Taxes paid to another jurisdiction.

i. 36 M.R.S. § 5217-A

Annually, Maine imposes a tax "on the Maine taxable income of every resident individual of this State." 36 M.R.S. § 5111. The Maine taxable income of an individual is equal to the individual's federal adjusted gross income with certain modifications provided by Maine

[2] Subsequently, while this appeal was pending with the Board, MRS determined that the assessment contained an unrelated overstatement of tax in the amount of $[amount]. MRS has agreed to reduce the assessment for [year 3] by $[amount] plus a commensurate reduction of assessed interest and penalties.

law. *Id.* § 5121. A resident individual is also allowed a credit against his or her Maine income tax for the amount of tax imposed on that individual by

> any political subdivision of a foreign country that is analogous to a state of the United States *with respect to income subject to tax under this Part* [Income Tax] that is derived from sources in that taxing jurisdiction.

36 M.R.S. § 5217-A (emphasis added).

The [Taxpayers] argue that section 5217-A entitles them to credit for the full amount of tax they paid to [Province]. In support of their position, they point to the case of *Boulet v. State Tax Assessor,* 626 A.2d 33 (Me. 1993), which states that section 5217-A "is clear on its face that an amount equal to any tax paid to [another jurisdiction] on such income should be credited toward the resident's Maine tax liability." *Id.* at 34. However, the [Taxpayers] take the quoted language out of context, with an inaccurate result. In *Boulet*, the taxpayers were residents of Maine who won the Massachusetts lottery after purchasing a lottery ticket in that state. Massachusetts taxed the Boulets' winnings as Massachusetts-source income. The winnings, having been included in the Boulets' federal adjusted gross income, were subject to and were taxed by Maine. The language quoted by the [Taxpayers] is correct under the facts of *Boulet* because the entire amount of the Boulets' winnings, which was taxed by Massachusetts, was also subject to tax by Maine. *Boulet* does not hold that a Maine resident may claim a credit for taxes paid to another jurisdiction on income that is not subject to Maine tax.

The plain language of the statute limits the credit under section 5217-A to the amount of income tax that was paid to another jurisdiction "with respect to" income subject to Maine income tax.[3] Thus, only the amount of tax that was paid to [Province] on income that was also

[3] "When interpreting a statute, we give effect to the intent of the Legislature by first looking at the plain meaning of the statutory language." *Foster v. State Tax Assessor,* 1998 ME 205, ¶7, 716 A.2d 1012, 1014.

subject to tax by Maine may be credited against the [Taxpayers]' Maine income tax liability. Consequently, because only their *net* income from the rental of their [Province] properties was includable in federal adjusted gross income, only the tax paid by the [Taxpayers] to [Province] on that same *net* income is eligible for credit under section 5217-A against their Maine income tax liability. No adjustment to the assessment on this basis is warranted.

ii. The Income and Property Tax Convention

The [Taxpayers] next argue that the assessment must be cancelled under the provisions of the Income and Property Tax Convention, effective [date], entered into between the United States and [Country] (the "Convention"). In support of their position, the [Taxpayers] rely on the following language from the relevant Article of the Convention:

> a resident of one of the Contracting States may be taxed by the other Contracting State on any income from sources within that other Contracting State *and only on such income* . . . .

This provision of the Convention is entirely inapplicable to the present case, as is made clear by substituting the applicable names of the Contracting States into the quoted language. Doing so yields the following:

> a resident of [the United States] may be taxed by [Country] on any income from sources within [Country] *and only on such income* . . . .

Thus, it is clear that, in this case, the quoted language only restricts [Country]'s power to impose tax on the [Taxpayers]' income. It in no way restricts the taxing authority of either the United States or the State of Maine.

The [Taxpayers] then point to the fact that the Convention specifically provides that it "shall not be construed to restrict in any manner any . . . credit, or other allowance now or hereafter accorded." *Id.* The disallowance of a portion of the claimed credit in this case has nothing to do with the Convention, but rather is a result of the plain language of the Maine

statute itself. Thus, the Convention is entirely irrelevant to this matter. No adjustment to the assessment on this basis is warranted.

B. Penalties.

The assessment contains substantial understatement penalties in connection with the [Taxpayers]' claim of credit under section 5217-A. 36 M.R.S. § 187-B(4-A). The abatement of penalties is governed by 36 M.R.S. § 187-B, which provides that MRS "shall waive or abate" any penalty if the taxpayer supplies "reasonable cause" for doing so. Reasonable cause includes, but is not limited to, any of the circumstances listed in section 187-B(7). The [Taxpayers] argue that there is reasonable cause to cancel the assessed penalties because, in preparing their returns for the years at issue, they relied on the instructions provided by MRS, leading them to believe that they were entitled to claim credit for the full amount of tax they paid to [Province].

To the extent that the [Taxpayers] have misread MRS's instructions regarding the correct application of the credit under section 5217-A, this is not their first misreading. In support of its position that the assessment should be upheld, MRS submitted two prior administrative reconsideration decisions between MRS and the [Taxpayers] on this very issue: one dated [date, year 2], regarding tax year [year 1], and the other dated [date, year 4], regarding tax year [year 2]. The first of these decisions describes in detail the correct manner of figuring the credit under section 5217-A. Given that MRS has twice previously provided the [Taxpayers] with an explanation of the relevant tax law, the [Taxpayers] have not shown substantial authority or other reasonable cause to abate penalties. The assessed penalties are upheld in full.

C. Interest.

The imposition and abatement of interest is governed by 36 M.R.S. § 186. Unlike the penalty waiver provisions in section 187-B(7), section 186 "confers broad discretion on [MRS]

because it does not require . . . a showing of reasonable cause." *Victor Bravo Aviation, LLC v. State Tax Assessor*, 2012 ME 32 ¶ 10, 39 A.3d 65. Instead, MRS "may abate or waive the payment" of interest only if the failure to pay the tax at issue "is explained to the satisfaction" of MRS. 36 M.R.S. § 186. This language "indicates a highly discretionary standard that is not easily met by the taxpayer." *Victor Bravo,* 2012 ME 32 ¶ 14, 39 A.3d 65. Here, the [Taxpayers] have not met their burden of explaining satisfactorily their failure to correctly compute their credit for taxes paid to [Province], [Country], for [year 3] and [year 4]. Consequently, the Board is unable to abate the interest assessed. No adjustment is warranted.

IV. Decision

In view of the plain language of 36 M.R.S. § 5217-A, providing a credit against a Maine resident's income tax liability for tax paid to another jurisdiction "with respect to" income subject to Maine income tax, the [Taxpayers] have not shown that they are entitled to an adjustment to the tax, penalties, or interest contained in the assessment, which we therefore uphold in full.

The Board may, in limited circumstances, reconsider its decision on any appeal. If either party wishes to request reconsideration, that party must file a written request with the Board within 20 days of receiving this decision. Contact the Appeals Office at 207-287-2864 or see the Board's rules, available at http://www.maine.gov/boardoftaxappeals/lawsrules/, for more information on when the Board may grant reconsideration. If no motion for reconsideration is filed within 20 days of the date of this proposed decision, it will become the Board's final administrative action. If either party wishes to appeal the Board's decision in this matter to the Maine Superior Court, that party must do so within 60 days of receiving this decision. During the 60-day period in which an appeal may be filed with the Superior Court, the [Taxpayers] may

contact Maine Revenue Services at 207-624-9725 for the amount of tax that is currently due, together with any interest or penalties owed. After that 60-day period has expired, Maine Revenue Services will contact the [Taxpayers] with an updated amount of tax and any interest or penalties due at that time.

Issued by the Board: July 21, 2016

STATE OF MAINE
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MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2015-15

[INDIVIDUAL TAXPAYERS],

Petitioners

v.

DECISION ON REQUEST
FOR RECONSIDERATION

MAINE REVENUE SERVICES,

Respondent

On August 15, 2016, the [Taxpayers] submitted a Request for Reconsideration of the Board's decision in this matter that was issued on July 21, 2016. Reconsideration of Board decisions is governed by 18-674 C.M.R. ch. 100, § 305 of the Board's rules. Section 305 provides that the Board may reconsider a decision only if necessary to correct a procedural, factual, or legal error or when the requesting party has discovered relevant new evidence that was unknown to the requesting party prior to the issuance of the Board's decision.

Upon due consideration, the Board finds that the [Taxpayers] have not shown the existence of a procedural, factual, or legal error or the existence of newly discovered evidence. Consequently, the Request for Reconsideration is hereby **DENIED**.

If either party wishes to appeal the Board's decision of July 21, 2016, to the Maine Superior Court, that party must do so within 60 days of receiving this decision denying reconsideration.

Issued by the Board: August 18, 2016