

STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2020-1

[INDIVIDUAL TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayer] (the “Taxpayer”) appeals from a decision by Maine Revenue Services (“MRS”) disallowing his claim of a Maine income tax credit for taxes imposed by another jurisdiction for tax year [year]. For the reasons discussed below, we uphold the assessment in full.

I. Background

At all relevant times, the Taxpayer was a Maine resident individual. During the year at issue, he owned and operated a Connecticut limited liability company (the “Company”), which was a pass-through entity treated as a subchapter S corporation for federal income tax purposes. *See* I.R.C. § 1363(a).

Beginning in tax year 2018, Connecticut imposed a new tax upon certain pass-through entities, including the Company, with an offsetting income tax credit for the entity owners. *See* Conn. Public Act No. 18-49, May 31, 2018. This new tax was intended to mitigate the cap placed on the deductibility of state and local taxes by individuals at the federal level by imposing an entity level tax deductible as a business expense. For the tax year at issue, the Company timely paid the tax. Connecticut also imposed an income tax on the Taxpayer, however after

credit for the Connecticut tax imposed upon and paid by the Company, the Taxpayer had no income tax liability to that state.

The Taxpayer subsequently filed a Maine income tax return, claiming a credit against his Maine income tax liability for the tax that the Company paid to Connecticut. Upon examining the Taxpayer's Maine return, MRS determined that the Taxpayer was not entitled to the claimed credit and issued an assessment of tax, interest, and penalties in the total amount of \$[amount].¹ This appeal followed.

On appeal, the Taxpayer argues that he is entitled to the income tax credit claimed on his Maine return and that the assessment must be cancelled in full. It is the Taxpayer's burden to show that he is entitled to the relief he seeks. 36 M.R.S. § 151-D(10)(F). We consider the matter on appeal de novo. *Id.* § 151(2)(G).

II. Discussion

Annually, Maine income tax is imposed “on the Maine taxable income of every resident individual of this State.” 36 M.R.S. § 5111. “Maine taxable income” is defined as “an individual’s federal adjusted gross income,” with certain modifications provided by Maine law not applicable to this case. *Id.* § 5121. Where an individual is a member of a pass-through entity, such as a subchapter S corporation, the individual’s federal adjusted gross income includes the individual’s pro rata share of the business income attributable to that entity. *See* I.R.C. §§ 1361-77. In circumstances where a Maine resident individual has income that was earned in and taxed by another state, Maine tax law provides a credit against the individual’s Maine income tax liability

¹ MRS cancelled the assessed penalties on reconsideration, prior to the appeal having been filed.

for the amount of income tax imposed on that individual for the taxable year by another 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.

The Taxpayer contends that he is entitled to a credit under section 5217-A against his Maine income tax liability pursuant to two theories. First, the Taxpayer argues that he is entitled to credit for the amount of Connecticut tax imposed upon and paid by the Company. Second, he argues that he is entitled to the credit for the amount of Connecticut income tax imposed upon him as an individual. According to the Taxpayer, if no credit is provided to him under either of these theories, then Maine's tax scheme is unconstitutional. We address each of the Taxpayer's arguments in turn, below.

A. Credit for Taxes Imposed on the Company

The Taxpayer first argues that he is entitled to a credit under section 5217-A for income taxes imposed on the Company by Connecticut. He explains that, as a pass-through entity, the income of the Company flowed-through to him for income tax purposes, and that the tax that Connecticut imposed on the Company was functionally a tax upon his own personal income. The Maine Law Court has recently considered the same argument advanced by the Taxpayer in *Goggin v. State Tax Assessor*, 2018 ME 111, 191 A.3d 341. In that case, the taxpayers were Maine residents who owned a New Hampshire limited liability company, a pass-through entity for federal income tax purposes. New Hampshire imposed a "business profits tax" and "business enterprise tax" on the taxpayers' company, which the company timely paid. On their Maine income tax return, the taxpayers claimed a credit under section 5217-A for the tax imposed on the company by New Hampshire. The Court examined the language of the Maine credit and

determined that, for purposes of section 5217-A, the plain meaning of the statute “excludes taxes that are imposed on, and paid by, business entities.” *Id.* ¶ 16.

In the present case, the Taxpayer is similarly seeking credit for a tax that was not imposed on him but was instead imposed on the Company, a separate business entity. Even though the Company’s income passed through to the Taxpayer, the Maine credit statute is limited by its terms to taxes imposed on individuals. The Taxpayer has not shown that he is entitled to the credit provided under section 5217-A for taxes imposed on the Company by the State of Connecticut. No adjustment to the assessment on this basis is warranted.

B. Credit for Taxes Imposed on the Taxpayer

The Taxpayer next contends that he is entitled to a credit against his Maine income tax liability for the amount of individual income tax imposed on him by Connecticut. Under 36 M.R.S. § 5217-A, a Maine income tax credit is specifically provided “for the amount of income tax imposed on [an] individual for the taxable year by another state . . .” The question presented is how the credit is computed.

In examining the credit, we first note that section 5217-A operates “with respect to income subject to tax [by Maine] that is derived from sources in [the other] taxing jurisdiction.” *Id.* Additionally, as used in section 5217-A, the “[i]ncome taxes imposed by another jurisdiction means the tax *after credits* (except withholding and estimated tax payments).” *See* Maine Revenue Services, Income/Estate Tax Division, *Credit for Taxes Paid to Another Jurisdiction, Guidance Document*, page 3, (December 2019) (emphasis added). After application of all available credits—including the credit for the Company’s Connecticut business profits tax—the Taxpayer had no Connecticut individual income tax liability. Consequently, the Taxpayer has not shown that he is entitled to any Maine credit under section 5217-A for individual income

taxes imposed upon him by Connecticut. No adjustment to the assessment on this basis is warranted

C. Constitutional Considerations

Finally, the Taxpayer argues that if section 5217-A does not provide him with a credit against his Maine tax liability, then the Maine income tax scheme violates the Commerce Clause of the United States Constitution and permits double taxation. We disagree.

In considering the Taxpayer's arguments, we first note that

[a] person challenging the constitutionality of a statute bears a heavy burden of proving unconstitutionality[,] since all acts of the Legislature are presumed constitutional. To overcome the presumption of constitutionality, the party challenging the statute must demonstrate convincingly that the statute and the Constitution conflict.

Goggin, 2018 ME 111, ¶ 20, 191 A.3d 341 (alterations in original) (quotation marks omitted).

We look to the plain meaning of the statute to give effect to the Legislature's intent, mindful that when a tax statute provides a credit, it must be narrowly construed. *State Tax Assessor v. MCI Commc's. Servs.*, 2017 ME 119, ¶ 7, 164 A.3d 952; *Goggin*, 2018 ME 111, ¶ 14. When the constitutionality of a state's tax laws is questioned, the courts often employ certain tests to help "identify tax schemes that discriminate against interstate commerce"

Comptroller of the Treasury of Maryland v. Wynne, 575 U.S. _____, 135 S. Ct. 1787, 1803 (2015). Such schemes include those having "the potential to result in the discriminatory double taxation of income earned out of State [However,] those schemes could be cured by taxes that satisfy what we have subsequently labeled the 'internal consistency' test." *Id.* at _____, 135 S. Ct. at 1801-02. The internal consistency test "looks to the structure of the tax at issue to see whether its identical application by every State in the Union would place interstate commerce at

a disadvantage as compared with commerce intrastate.” *Oklahoma Tax Comm’n v. Jefferson Lines, Inc.*, 514 U.S. 175, 185, 115 S. Ct. 1331, 131 L. Ed. 2d 261 (1995).

The Maine Law Court has already examined the constitutionality of section 5217-A and Maine’s related tax laws in *Goggin*: “Applying the internal consistency test, if all states had Maine’s tax statutes—including its statutes regarding the taxation of pass-through entities—there would be no disproportionate taxation of out-of-state income.” *Id.* ¶ 26. Based on the facts presented and the applicable law, the Taxpayer has not shown that Maine’s tax statutes run afoul of the Commerce Clause of the United States’ Constitution. No adjustment to the assessment on this basis is warranted.

III. Decision

We find that the Taxpayer is not entitled to any credit for taxes paid to another jurisdiction pursuant to section 5217-A for the period at issue. We also find that the Taxpayer has not shown that Maine’s tax law is unconstitutional as applied to him. No adjustment to the assessment is warranted.

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 request 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.

Issued by the Board: March 1, 2021