STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2015-4

[INDIVIDUAL JOINT TAXPAYERS],

Petitioners

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

I. Introduction

[Individual Taxpayers (the "Taxpayer" and "Spouse"*, or collectively, the "Petitioners"),] appeal from Maine Revenue Services' ("MRS's") disallowance of a subtraction modification that the [Individual Taxpayers] made on their joint Maine income tax return for [year 2], resulting in a tax liability for that year of $[amount]. Although we find the result regrettable, we uphold MRS' determination.

II. Background

The [Petitioners] did not request an Appeals Conference, opting instead to have their appeal considered solely on written materials submitted. The parties, however, do not dispute the facts, and we recite them below.

At all relevant times, the [Petitioners] were Maine resident individuals filing married-joint Maine income tax returns. Prior to the period at issue, [the Taxpayer] was employed by the State of Maine, and contributed to the Maine Public Employees Retirement System ("MePERS")

[* The redacted decision refers to the Petitioners using their respective designations as "Taxpayer" and "Spouse" as reflected on the Maine income tax returns that they filed for years at issue in this appeal.]

as required by 5 MRS § 17651. Although [the Taxpayer's] MePERS contributions were tax deferred for federal income tax purposes,[1] the [Petitioners] paid Maine income tax on them in the year of contribution as required by Maine law.[2] In [year 1], [the Taxpayer] left employment with the State of Maine, and elected to "roll over" [the Taxpayer's MePERS] contributions,[3] totaling $[amount], into an individual retirement account (the "IRA") administered by [Investment Firm]. By electing a rollover, [the Taxpayer] continued to defer federal taxation of [the Taxpayer's] MePERS contributions, and those amounts were not included in [the Taxpayer's] federal adjusted gross income at the time of rollover. Subsequent to the rollover, however, [the Taxpayer] requested and received distributions from the IRA: a total of $[amount1] in [year 1] and $[amount2] in [year 2], which amounts were included in [the Taxpayer's] federal adjusted gross income and were subjected to federal income tax in those respective years.

The [Petitioners] timely filed their [year 1] and [year 2] Maine income tax returns. In computing their Maine liability for those years, the [Petitioners] subtracted the respective amounts of $[amount1] and $[amount2] from their federal adjusted gross income on the ground that those amounts had previously been taxed by Maine when contributed to MePERS. Thus, as computed by the [Petitioners], their Maine income tax liability for [year 1] was $[amount] (which they paid), and they had no Maine tax liability for [year 2].[4]

In processing the [Petitioners'] [year 2] return, MRS disallowed the $[amount2] subtraction modification and determined the [Petitioners'] [year 2] Maine income tax liability to

[1] MePERS is a governmental qualified defined benefit plan pursuant to I.R.C. § 401(a) and 414(d). 5 M.R.S. § 17602. *See also* I.R.C. § 501(a) (providing that qualified plans described in section 401(a) are exempt from tax under Subtitle A (Income Taxes)).

[2] 36 M.R.S. § 5122(1)(G)

[3] 5 M.R.S. § 17603(5) provides for a rollover of MePERS contributions.

[4] Because the [Petitioners] had withholding in [year 2] totaling $[amount], they requested an overpayment refund in that year for that amount.

be $[amount]. After allowing credit for the [Petitioners'] [year 2] Maine income tax withholding, MRS determined that the [Petitioners] owed an additional $[amount] of Maine income tax for that year.[5] The [Petitioners] timely requested that MRS reconsider its determination, which MRS denied. This appeal followed.

The sole issue presented on appeal is whether, under Maine income tax law, the [Petitioners] are entitled to the subtraction modification that they claimed for tax year [year 2] in computing their Maine income tax liability. It is the [Petitioners'] burden to show that it is more likely than not that MRS erred in disallowing the modification. 36 M.R.S. § 151-D(10)(F).

III. Law

Annually, Maine income tax law 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 a resident individual is equal to the individual's federal adjusted gross income with certain modifications provided by law. 36 M.R.S.A. § 5121.

As is relevant to this case, 36 M.R.S. § 5122(1)(G) provides that MePERS "pickup contributions"[6] made during the subject year are added to the individual's federal adjusted gross income in computing the Maine tax, thereby subjecting the contributions to Maine income tax in the year they are made. In a year when MePERS contributions are distributed, however, section 5122(2)(E) requires that "[p]ick-up contributions paid to the taxpayer by [MePERS] or distributed as the result of a rollover, whether or not included in federal adjusted gross income,

[5] MRS also examined the [Petitioners'] Maine income tax return for tax year [year 1], and determined that they were due a refund in the amount of $[amount] for that year. MRS applied the [Petitioners'] [year 1] overpayment against their [year 2] liability, for a balance due for [year 2] of $[amount], as determined by MRS.

[6] "Pick-up contributions" are "member contributions to the retirement system which are assumed and paid by the employer through a reduction of members' salaries for services rendered . . . in lieu of employee contributions." 5 M.R.S. § 17001(28-A).

that have been previously taxed under this Part [Income Tax]" be subtracted from federal gross income when computing the Maine tax.

IV. Discussion

MRS computed the [Petitioners'] Maine income tax liability for [year 2] using their federal adjusted gross income for that year. Whereas no MePERS distributions had been made in that year, no subtraction modification to federal adjusted gross income was available under 36 M.R.S. § 5122(2)(E). MRS therefore computed the [Petitioners'] [year 2] Maine liability without regard to whether any of their income had been previously taxed by Maine. On appeal, the [Petitioners] are in essence asking us to look behind federal adjusted gross income to the source of that income in determining their Maine income tax liability. In light of the court's holding in *Tiedeman, Green, Blair, and Smith*, this is neither advisable nor permitted by law.

The Maine Supreme Court's longstanding interpretation of section 5121—defining a resident's Maine taxable income as his or her federal adjusted gross income as modified by statute—forecloses any administrative or judicial inquiry into the nature or composition of the funds included in federal adjusted gross income.[7] *See Tiedemann v. Johnson*, 316 A.2d 359 (Me. 1974); *Blair v. State Tax Assessor*, 585 A.2d 957 (Me. 1984); *Green v. State Tax Assessor*, 562 A.2d 1217 (Me. 1989); *Smith v. State Tax Assessor*, 2004 ME 120, 860 A.2d 387. Specifically, in adopting federal adjusted gross income as the standard by which taxable income would be measured in Maine,

> the Legislature did not undertake creation of a unique or complicated income tax scheme. Nor did it provide the vast administrative machinery which would be necessary to supply the interpretive and investigative functions of the Internal

[7] This is not to say that the Assessor does not have the authority to audit or adjust the federal adjusted gross income figure as reported on a taxpayer's state return. *See Williams v. State Tax Assessor*, 2002 ME 172, ¶ 13, 812 A.2d 245 (holding that the Assessor may "audit the federal adjusted gross income figure used in calculating Maine taxable income").

> Revenue Service. We think . . . that our Legislature sought to foreclose the necessity for determination of the "source, nature or composition of the funds."

Blair v. State Tax Assessor, 585 A.2d 957,959-960 (Me. 1984) (quoting *Tiedmann v. Johnson,* 316 A.2d 359, at 364 (Me. 1974)). Thus, in deciding this case, we confine our analysis to the language of sections 5121 and 5122 and the facts presented. In this case, section 5122(2)(E) requires the [Petitioners] to subtract the rollover distribution of MePERS solely and fully in the year of rollover, without regard to whether the amount of the rollover distribution was included in federal adjusted gross income. The [Petitioners] ask us to look behind federal adjusted gross income to the source of that income. In light of the court's holding in *Tiedeman, Green, Blair, and Smith,* this is neither advisable nor permitted by law.

In *Smith,* taxpayers similarly sought relief from seemingly double taxation on their retirement accounts. The Smiths had paid Massachusetts income tax on their contributions to retirement accounts while they were residents of Massachusetts. The Smiths then retired to Maine, where their distributions from those accounts were taxed by this state. The Court first found that, "[w]ere the law as the Smiths would have it, with the State obligated to offset taxes previously imposed on income used to generate [retirement plan] contributions . . . , calculation of the basis for taxation of . . . distributions would become a difficult or impossible task." *Id.* ¶ 12. The Court then held that Maine commits no violation "by relying, for commencement of its taxation calculations, on the federal adjusted gross income reported on the federal tax returns, then adjusting the Maine tax to consider the state taxes imposed on an individual's reported federal adjusted gross income in the year . . . that the distribution occurs and is reported as income." *Id.* at ¶ 13.

As directed by the Court, we look solely to the plain and unambiguous statutory language in deciding this case, without regard to whether the [Petitioners] had any need for a subtraction

modification in the year of rollover. The [Taxpayer's] MePERS rollover distribution occurred in tax year [year 1]. Consequently, [the Petitioners] were entitled to take the subtraction modification under section 5122(2)(E) only in that year and not in [year 2]. In [year 2], the [Petitioners'] Maine income tax was based on their federal adjusted gross income for that year without any subtraction modification for withdrawals from MePERS. Because they had no qualifying withdrawals in that year, the [Petitioners] have not shown that this treatment was incorrect. No adjustment to the MRS determination is warranted on this basis.

The [Petitioners] next argue that the subtraction modification under section 5122(2)(E) is not limited to the to the single year and aggregate amount of their MePERS rollover. Rather, the [Petitioners] maintain that the rolled-over funds continued to be "MePERS distributions" for purposes of section 5122(2)(E) following their rollover into the IRA, and that the subtraction modification remained available to offset Maine income tax liability when the funds were eventually included in federal adjusted gross income in [year 2]. Contrary to the [Petitioners'] contention, however, the modifications under section 5122 are made to federal adjusted gross income on an individual, annual basis "for each taxable year." 36 M.R.S. §§ 5111, 5121. Furthermore, the plain language of 36 M.R.S. § 5122(2)(E) clearly provides that when computing Maine income tax, federal adjusted gross income shall be reduced by "contributions *. . . distributed [by MePERS] as the result of a rollover, whether or not included in federal adjusted gross income*, that have been previously taxed under this Part [Income Tax]." (Emphasis added).[8] Thus, no adjustment to MRS's determination is warranted on the theory advanced by the [Petitioners].

[8] Effective June 5, 1999, the legislature added the language "or distributed as the result of a rollover, whether or not included in federal adjusted gross income" to 36 M.R.S. § 5122(2)(E), removing any ambiguity whether a rollover constitutes a distribution of MePERS contributions entitled to a subtraction modification.

Alternatively, the [Petitioners] argue that, because the legislature did not intend to tax [the Taxpayer's] MePERS contributions twice, the subtraction modification provided under section 5122(2)(E) must be deemed to follow the contributions until those contributions are included in federal taxable income, whereupon the subtraction modification would offset any redundant Maine tax. Although we are sympathetic to the [Petitioners'] position, we do not agree with their contention or conclusion.

The Maine legislature has demonstrated its ability to effect the carry-forward of a subtraction modification when it so desires. *See, e.g.*, 36 M.R.S. § 5122(2)(CC) (providing for the carry-over of net operating loss adjustments). The legislature has chosen not to provide a carry-forward for the subtraction modification under section 5122(2)(E), but has instead required that it be used only in the year of the MePERS distribution "whether or not included in federal adjusted gross income." *Id.* §§ 5121, 5122(2)(E). "When we interpret a tax statute, the plain meaning of the statute controls if the statute is unambiguous." *Blue Yonder, LLC v. State Tax Assessor*, 2011 ME 49, ¶ 10, 17 A.3d 667. Given the clear, precise language used by the legislature in providing the subtraction modification under section 5122(2)(E), we have no choice but to apply it strictly by its terms. "If a change in the law is desired it must come from the legislature." *Coca-Cola Bottling Plants, Inc. v. Johnson*, 147 Me. 327, 332, 87 A.2d 667, 670 (Me. 1952). Consequently, we do not disturb MRS's determination.

V. DECISION

For tax year 2014, the [Petitioners] have not shown that they were entitled to the subtraction modification provided under 36 M.R.S. § 5122(2)(E) in computing their Maine income tax. Accordingly, we uphold the determination of MRS 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 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. During the 60-day period in which an appeal may be filed with the Superior Court, [the Petitioners] 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 Petitioners] with an updated amount of tax and any interest or penalties due at that time.

Issued by the Board: January 4, 2016