NO CV 03 0519616S	:	SUPERIOR COURT
LAURA A. GAVIGAN, ET AL.	:	TAX SESSION
v.	:	NEW BRITAIN
COMMISSIONER OF REVENUE SERVICES	:	FEBRUARY 20, 2004

NO CV 03 0519924S	:	SUPERIOR COURT
DENNIS M. GAVIGAN	:	TAX SESSION
v.	:	NEW BRITAIN
COMMISSIONER OF REVENUE SERVICES	:	FEBRUARY 20, 2004

MEMORANDUM OF DECISION

The plaintiffs, Laura A Gavigan and Dennis M. Gavigan (the Gavigans), bring these appeals pursuant to General Statutes § 12-730 challenging a decision of the commissioner of revenue services (Commissioner) levying a tax on their income for the calendar income tax years of 1996 and 1997.

For the years of 1996 and 1997, the plaintiffs earned a total of $123,166.19. However, they reported on their joint state income tax returns zero income for these two years. The reason the Gavigans reported zero income on their state income tax returns is that they reported zero income on their federal income tax returns for the same two years. The Gavigans contend that since they reported zero income on their federal income tax returns, the Commissioner is obligated to accept their filing a state income tax return showing no income.

The Gavigans argue that they filed federal tax returns for 1996 and 1997 showing no income because their earnings are not income within the meaning of the Corporate Excise Tax of 1909, and further that the Sixteenth Amendment to the United States Constitution, which removed the need to apportion income taxes among the states, was fraudulently ratified.

The United States Internal Revenue Service (IRS) conducted an audit of the Gavigans' 1996 and 1997 federal income tax returns. Following the audit, the IRS determined that the Gavigans had filed frivolous and invalid tax returns for those years and assessed additional taxes against both plaintiffs.

The IRS has an agreement with state taxing agencies that provides for the IRS to report to states information which results in an increase or decrease of amounts reported on federal income tax returns.[1] The IRS has a policy to notify taxpayers when such changes are made and that they should file applicable state tax forms consistent with the

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[1] 26 U.S.C. sec. 6103 (d). The IRS report to the Commissioner stated that "Laura A. Gavigan had gross income of $34,398.00 for 1996 and $35,345.00 for 1997. Mrs. Gavigan's 1996 gross income included $33,880.00 from Lenny and Joe's Fish Tale Restaurant, $57.00 in interest income from Webster and Liberty Bank and $461.00 in federal income tax refund. Her 1997 gross income included wages of $35,290.00 from Lenny and Joe's Fish Tale Restaurant and $55.00 in interest income from Liberty Bank." (Defendant's Memorandum of Law, dated July 31, 2003, p.2.)

changes made by the IRS. General Statutes § 12-727 (b) (1) provides: "If the amount of a taxpayer's federal adjusted gross income, in the case of an individual . . . reported on such taxpayer's federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service . . . the taxpayer shall provide notice of such change or correction in federal adjusted gross income or federal taxable income, as the case may be, to the commissioner by filing, on or before the date that is ninety days after the final determination of such change . . . and shall concede the accuracy of such determination or state wherein it is erroneous. . . . The commissioner may redetermine and the taxpayer shall be required to pay the tax for any taxable year affected, regardless of any otherwise applicable statute of limitations." The plaintiffs made no such filing of an amended state tax return for the year 1996 or 1997.

The plaintiffs, in their post trial brief, contend that the only issue in this case is whether the Commissioner refuted the plaintiff's claim that it owed no income tax to the state of Connecticut. Plaintiffs recite in their post trial brief: "[I]t was the plaintiffs who brought this action against the defendant, for the sole purpose of allowing the defendant to refute the plaintiff's allegation that the purported 'DETERMINATIONS' [of the Commissioner] did not directly address the content of the appeals of the assessments. Plaintiffs did not bring this action for the defendant to prosecute an assessment against the plaintiffs. The defendant's answer, memorandum of law preliminary to trial, and argument at trial, made no attempt to controvert the complaint or present an affirmative defense. Defendant made no effort to address the only issue of the complaint, the 'DETERMINATIONS'." (Plaintiffs' Post Trial Brief, dated December 22, 2003, p. 6.)

The plaintiffs fail to realize or understand that in a tax appeal such as this, the burden is on the plaintiff taxpayers, not the Commissioner, to show that the Commissioner was in error in making the assessment of additional taxes upon them.

Leonard v. Commissioner of Revenue Services, 264 Conn. 286, 302, 822 A.2d 1184 (2003).

Underlying the plaintiffs' claim that the Commissioner has not shown the plaintiffs to be in error, is their claim that they had not reported wages and interest income on their 1996 and 1997 federal income tax returns, and therefore, it was appropriate for them to report no adjusted gross income on their 1996 and 1997 state income tax returns. The plaintiffs' rationale for this position is that 26 U.S.C. §§ 861-865[2] "mandate[s] that, before taxable income can be determined, taxable sources of gross income must be determined. Pursuant to the operative sections of the Internal Revenue Code which give rise to statutory groupings, plaintiffs for the years 1996 and 1997 had no taxable sources of gross income from which taxable income could be deducted. Taxable income constituting adjusted gross income or federal adjusted gross income. No published authority has ever held that the type of income received by the plaintiffs was not excluded from federal income taxation by the operation of 26 U.S.C. §§ 861-865 and the corresponding regulations. Therefore, having reported no federal adjusted gross income, and the United States Tax Court or United States District Court having not determined otherwise, plaintiffs had no income subject to Connecticut Income Tax pursuant to Connecticut statute." (Plaintiffs' Post Trial Brief, dated December 22, 2003, p. 5.)

The plaintiffs were residents of the state of Connecticut for the tax years in issue and pursuant to General Statutes § 12-700 (a) their taxable income was subject to

[2] In dealing with an earlier statute defining income, one Federal Court of Appeals stated: "The statute in question undertakes to classify the sources of income within the United States and without the United States by the nature and location of the activities of the taxpayer or his property which produces the income." Commissioner of Internal Revenue v. Ferro-Enamel Corp.,134 F.2d 564, 566 (6th Cir. 1943).

taxation. General Statutes § 12-701 (19) defines "adjusted gross income" as "the adjusted gross income of a natural person with respect to any taxable year, as determined for federal income tax purposes and as properly reported on such person's federal income tax return." From the plaintiffs' standpoint, the key term in this statute is "properly reported."

As a result of an IRS audit, the plaintiffs adjusted gross income was changed from zero to include the above described earnings. Based upon the IRS audit, the plaintiffs' state income tax returns for 1996 and 1997 left unchanged, after the IRS audit, were not "properly reported."

The key issue raised by the plaintiffs is that the source of their income determines whether or not this income is subject to the state income tax. Our answer to this issue is that "[t]he states' constitutional power to tax residents on all of their personal income from whatever source derived is well established." Hellerstein & Hellerstein, State Taxation (3rd Ed.) § 20.04[1].

Hellerstein & Hellerstein noted that the U.S. Supreme Court articulated the justification for this power in New York ex rel. Cohn v. Graves, 300 U.S. 308, 312-313, 57 S.Ct. 466, 81 L. Ed. 666 (1937): "That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicile itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from responsibility for sharing the costs of government. . . . Neither the privilege nor the burden is affected by the character of the source from which the income is derived. For that reason income is not necessarily clothed with the tax immunity enjoyed by its source." (Citation omitted.) See Hellerstein & Hellerstein, supra, § 20.04.

As we have previously stated, it is the plaintiffs' burden to show that they have no income tax liability to the state of Connecticut for the taxable years of 1996 and 1997 or that they were exempt from the payment of the tax. Petco Insulation Co. v. Crystal, 231 Conn. 315, 320, 649 A.2d 790 (1994). The plaintiffs were taxpayers as defined in § 12-700 and § 12-701 and they had taxable income that was subject to the Connecticut income tax. We find no merit to the plaintiffs' claim that because they reported zero income on their federal tax return (which turned out to be incorrect) the Commissioner must recognize and accept this fact in submitting their state tax return. Although Connecticut recognizes federal tax concepts, the power of the federal government to tax and the state's power to tax are two separate and independent taxing powers. Kellems v. Brown, 163 Conn. 478, 487, 313 A.2d 53 (1972), cert. denied, 409 U.S. 1099, 93 S. Ct. 911, 34 L. Ed. 2d 678 (1973). "In Connecticut, the power to levy taxes is vested in the General Assembly. . . . Unlike the federal constitutional limitation which existed prior to adoption of the sixteenth amendment, it appears that this state's power of taxation has never been constitutionally limited except by the constitutional requirements of equal protection and due process." (Citation omitted.) Id.

The plaintiffs have failed to sustain their burden of proof in this action to show that the Commissioner was in error. Accordingly, judgment may enter in favor of the defendant Commissioner dismissing this appeal.

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Arnold W. Aronson
Judge Trial Referee