

STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
601 DELAWARE AVENUE
WILMINGTON, DELAWARE 19899

TAX NEWSGRAM 71-1

November 10, 1971

TAX APPEAL BOARD DECISIONS

PERSONAL INCOME TAX

- Exclusion from taxable income.
- Insurance premiums paid by the Petitioner's employer under the "whole-life-split dollar plan."

QUESTION: Whether certain insurance premiums paid by the Petitioner's employer and listed as "other compensation" per W-2 represents taxable income to the employee. The policy was to afford life insurance protection for Petitioner's family and it was to provide a sum of money available on Petitioner's retirement date to fund a retirement arrangement for Petitioner.

DECISION: Against the Petitioner.
Docket No. 428

PERSONAL INCOME TAX

- Timely assessment of deficiency.

QUESTION: Whether there was fraud or a gross understatement of income such as would permit the assessment of the deficiency after the three-year period had run.

Taxable's return for 1965 was examined by the Internal Revenue Service but the examination was not completed until after the statute of limitation had run for purposes of assessment of additional tax due.

The position of the state was that there was a gross understatement of income but the examiner had written and sent to the taxpayer a report charging negligence. The state could not overcome the presumption that it was negligence as claimed rather than gross understatement.

DECISION: Held negligence on the part of the taxpayer and that tax interest and penalty be abated. Docket No. 430.

EDITOR'S NOTE: The law has since been revised and controls within the office should prevent further loss of revenue.

PERSONAL INCOME TAX

- Exclusions from taxable income - Interest on refund paid by the United States.

Taxpayer excluded from taxable income interest received from the United States on a refund of Federal Estate Tax.

Petitioners claimed the interest income in question constitutes interest on an "obligation" of the United States and; therefore, is exempt from Delaware income tax under the provisions of 30 Delaware Code, Section 1116 (4).

DECISION: It has been held that the interest received was not on an obligation of the United States within the meaning of the Delaware Code and therefore taxable. Docket No. 420

PERSONAL INCOME TAX

- Away from home expenses.

QUESTION: Should taxpayer be allowed to deduct expenses incurred at Cambridge, Maryland, while away from his residence in Selbyville, Delaware.

During the entire year taxpayer's residence was Selbyville, Delaware and the work which gave rise to his business income was performed in Cambridge, Maryland.

In 1965, taxpayer entered into the contract which was operative throughout 1967. This agreement designated taxpayer as an independent contractor. It provided that he was to perform professional engineering services at the corporation's plant site for a stated weekly fee. It further provided that the agreement could be terminated by either party by giving the other party 24 hours' notice.

It was contended by the Division of Revenue that Cambridge, Maryland, was taxpayer's tax home and the expenses were personal.

The basic question was whether taxpayer's "usual place of business" was Selbyville, or Cambridge.

DECISION: Held to be Cambridge, Maryland, and the expenses not deductible as they were personal in nature, 30 Delaware Code, Section 1118 (1) (A). Docket No. 435

CORPORATION INCOME TAX

- Apportionment of income.
- Allocation of interest income.

QUESTION #1 As the interest received as income (as a result of mortgages partially held) to an in-state savings and loan association, is allocable to the state of the transactions (purchasing of mortgages held by loan association outside of Delaware) must expenses, including dividends, be allocated as "related or applicable expenses" pursuant to 30 Delaware Code, Section 1903 (b) (6).

QUESTION #2 Is a similar allocation to be made with respect to income and dividends received or interest received on U. S. Government obligations, both of which have been eliminated from taxable income in accordance with 30 Delaware Code, Section 1903 (a).

DECISION: As to Question #1 - For the Respondent.
As to Question #2 - For the Petitioner.
Revised Decision and Order. Docket No. 316

EDITOR'S NOTE: In computing the amount of the deduction, the Tax Appeal Board used the following formula:

Total income allocable = Percentage of allocable income x total income.

Total expense = Related and applicable expenses.

BAD CHECKS

This office during the year receives a certain number of bad checks from various sources and for various types of taxes.

On all checks of this nature, we make every attempt to collect the full amount of the check.

In the future the original documents received with the check shall be obtained in order to compute the amount of interest due to date of actual collection and to determine whether penalties should be or can be applied.



J. H. Kennedy
Director of Revenue

jvm

DISTRIBUTION: B and C