

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)	
)	No. 92A-0904
Daniel Q. and Janice R. Callister)	
)	

Representing the Parties:

For Appellants:	Stephen L. Tolles, Attorney
For Franchise Tax Board:	Richard Gould, Counsel

Counsel For Board of Equalization:	John S. Butterfield, Tax Counsel
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O P I N I O N

This appeal is made pursuant to former section 18593¹ of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Daniel Q. and Janice R. Callister against proposed assessments of additional personal income tax in the amounts of \$1,397.31, \$2,087.45 and \$3,271.94, for the years 1987, 1988 and 1989, respectively.

Appellants are Maryland residents and, for the appeal years, filed California nonresident personal income tax returns (Form 540NR). During this period, they apparently received California-source income. Appellants reported their California-source income on their Maryland personal income tax returns and paid Maryland taxes thereon. The Maryland tax consists of two elements: a 5 percent state income tax and a surcharge equal to between 20 and 50 percent of the state

¹ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue. (Section 18593 was renumbered as section 19045, operative January 1, 1994.)

income tax, depending on the location of the taxpayers' residence. (See Md. Code Ann., Tax-Gen. §§ 10-102, 10-103, 10-105, 10-106; [2 Md.] St. Tax Rptr.(CCH) ¶¶ 94-777, 94-778, 94-780, 94-782.) Appellants claimed both the Maryland state income tax and the surcharge as a credit for taxes paid to other states on their California Form 540NR returns.

Respondent denied appellants' claims for credit with respect to the surcharge, asserting that the surcharge is a local income tax and no credit is available for taxes paid to political subdivisions of the state, such as cities or counties.

Every nonresident is subject to California personal income tax on his or her entire taxable income derived from sources within this state. (Rev. & Tax. Code, § 17041, subd. (b).) However, under certain conditions, nonresidents are allowed a credit against their California personal income tax for net income taxes "imposed by and paid to" their state of residence on income also taxable in this state. (See Rev. & Tax. Code, § 18002, subds. (a) & (b); Appeal of Harold E., Jr., and Rosemary G. Donnell, 87-SBE-065, Oct. 6, 1987.) We have previously held that the Maryland surcharge is a local income tax which is neither imposed by, nor paid to the State of Maryland. (See Appeal of Philip D. Bartz, 94-SBE-006, Sept. 1, 1994.)

However, respondent has informed us that this issue was recently addressed by the Tax Court of the State of Minnesota. That court, in construing the same Maryland statutory language, reached a decision which is partially at odds with our decision in Bartz. The Minnesota court found that the surcharge equal to 20 percent of the Maryland state income tax is required by Maryland to be imposed by its counties. Any amount of the surcharge in excess of 20 percent of the state tax amount is discretionary with the counties. Therefore, the Minnesota court found that the portion of the surcharge equal to 20 percent of the state income tax imposed by Maryland should also be regarded as "imposed by" that state, and a credit allowed for such amount. (Meyer v. Commissioner (1993) Docket No. 6095, 1993 Minn. Tax Lexis 16.) Respondent further informs us that it has adopted the holding of the court in Meyer as its legal position in this and all other appeals concerning the issue of the Maryland surcharge.

We have reviewed the decision of the Minnesota Tax Court in Meyer, and accept its conclusion. Accordingly, we will no longer follow our previous holding in Appeal of Philip D. Bartz completely. Instead, we find that a tax credit may be allowed under Revenue and Taxation Code section 18002 for county "surcharge" taxes paid to Maryland, in an amount not to exceed the amount of the "surcharge" mandated by that state, which is currently in an amount not to exceed 20 percent of a taxpayer's Maryland state income tax liability. The balance of a surcharge paid, if any, shall not be regarded as taxes imposed by and paid to a state for purposes of section 18002.

Therefore, respondent's actions are reversed in part to coincide with the findings of this opinion.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, pursuant to current section 19047 of the Revenue and Taxation Code, that the actions of the Franchise Tax Board on the protest of Daniel Q. and Janice R. Callister against proposed assessments of additional personal income tax in the amounts of \$1,397.31, \$2,087.45 and \$3,271.94 for the years 1987, 1988 and 1989, respectively, be and the same are hereby affirmed in part, and reversed in part. Respondent is directed to allow the claimed credits in the amount of 20 percent of the Maryland state income tax paid by appellants during the appeal years.

Done at Sacramento, California, this 25th day of February, 1999, by the State Board of Equalization, with Board Members Mr. Klehs, Mr. Andal, Mr. Chiang, Mr. Parrish and Ms. Mandel* present.

Johan Klehs _____, Chairman

Dean F. Andal _____, Member

John Chiang _____, Member

Claude Parrish _____, Member

Marcy Jo Mandel* _____, Member

*For Kathleen Connell per Government Code section 7.9.