

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**GREGORY YOKELL and
SHIRLEY ANDRIES**

PETITIONER

VERSUS

DOCKET NO. 13150B

**DEPARTMENT OF
REVENUE, STATE OF LOUISIANA**

RESPONDENT

WRITTEN REASONS

Before this Board is the Petitioner, Gregory Yokell and Shirley Andries, husband and wife (collectively the “Taxpayer”) contesting the assessment and refund denial of individual income tax by the Louisiana Department of Revenue and Taxation (the “Department”) for the taxable year 2020. The issue before this Board is the proper calculation of the income tax credit claimed by the Taxpayer for income taxes paid to other states under La. R.S. 47:33. This Board held a trial on the merits in this matter on December 7, 2022. Participating in the trial were: Gregory Yokell, representing Taxpayer pro se, and Miranda Scroggins, representing the Department. After the trial, the matter was taken under advisement.

BACKGROUND AND FACTS

The facts are not in dispute. Taxpayer is a Louisiana resident. For the tax year 2020, the Taxpayer sold property in the State of Arkansas which resulted in long term capital gain to the Taxpayer of \$120,591.00. Arkansas, like Louisiana, does not provide for a rate differential between ordinary income and long term capital gains.

However, unlike Louisiana, Arkansas calculates the tax due on long term capital gains by excluding one-half ($\frac{1}{2}$) of that gain. Thus, on Taxpayers' 2020 Arkansas Non-Resident Income Tax Return, the Taxpayer reported gross Arkansas source income (long term capital gain) of \$120,591 on Arkansas Form 1000D (capital gain worksheet), but reduced that amount by 50%, or \$60,296.00, to compute Taxpayers' non-resident Arkansas tax liability. On the Arkansas Non Resident Income Tax Return, Taxpayer reported and paid income tax to Arkansas in the amount of \$3,178.00, in addition to a penalty for failure to pay estimated taxes in the amount of \$189.00.

On Taxpayers' 2020 Louisiana Individual Income Tax Return (Louisiana Return), Taxpayer claimed a credit for taxes paid to other states of \$3,378.00 (the combined tax and penalty amount paid by Taxpayer to Arkansas). On Louisiana Form R-10606 (Supplemental Worksheet for Credit for Taxes Paid to Other States), Taxpayer reported the total gain of \$120,961.00 in column 2 as "income earned in other states". The purpose of Form R-10606 is to calculate the limitations on the credit provided in La. R.S. 47:33(A)(5)(a), which in general terms limits the amount of the credit allowed against an individual's Louisiana Income Tax to the tax that would have been paid on the income had it been earned in Louisiana. By using the gross long term capital gain of \$120,961.00 as the base for purposes of calculating the limitation under La. R.S. 47:33(A)(5), the Taxpayers' calculation resulted in a limitation of \$4,730.00, and since the total amount of the tax paid to Arkansas was less than the limitation, the Taxpayers took the full amount of the credit against their Louisiana income tax liability for 2020. Based on the evidence introduced at the trial on this matter, it appears that as a result of the credit, Taxpayers claimed a refund of approximately \$900.00.

Upon review of Taxpayers' 2020 Louisiana income tax return, the Department partially disallowed the Taxpayers' credit under La. R.S. 47:33. At trial, the Department's position was that Taxpayer earned \$60,291.00 as income in Arkansas; and therefore, under La. R.S. 47:33(A)(5)(a), the limitation imposed against the credit was not \$4,730.00 as calculated by the Taxpayer, but rather \$2,395.00. Since the tax paid to Arkansas (\$3,378.00) exceeded the limitation, the Department's position is that the Taxpayer's credit allowable under La. R.S. 47:33 was limited to \$2,395.00. That adjustment resulted in the Department issuing a Notice of Assessment to the Taxpayer, which in effect denied Taxpayer's claimed refund and assessed an additional \$76.00 in tax, penalty and interest. It is from this assessment and the denial of the refund that the Taxpayer timely appeals to this Board.

OPINION

La. R.S. 47:33 allows a credit against the Louisiana income tax for income taxes paid to other states, providing in part:

(A) Subject to the following conditions, resident individuals shall be allowed a credit against the taxes imposed by this Chapter for net income taxes imposed by and paid to another state on income taxable under this Chapter . . .

One of the conditions on the allowance of the credit is found in La. R.S. 47:33(A)(5)(a), which provides:

(a) The credit shall be limited to the amount of Louisiana income tax that would have been imposed if the income earned in the other state had been earned in Louisiana.

The purpose of the limitation found in La. R.S. 47:33(A)(5)(a) is simply to keep Louisiana from bearing the economic burden of the income tax imposed by states with a higher tax rate than that of Louisiana. The legislative intent of imposing the limitation is best understood with the following conceptual example. Assume a Louisiana resident has earned income of \$100,000 in Louisiana and \$100,000 in New

York City. Assume further that the tax rate applicable in Louisiana is five percent (5%) and the tax rate applicable in New York City is ten percent (10%). The Louisiana resident pays \$10,000 in taxes to New York City on that resident's income earned there. On the resident's Louisiana income tax return, the resident would report total income of \$200,000, and total income taxes due the State of Louisiana (before the allowance of any credit) of \$10,000 (five percent (5%) of \$200,000). Without the limitation found in La. R.S. 47:33(A)(5)(a), the resident would then claim a credit of \$10,000 in income taxes paid in New York, and owe zero taxes to the State of Louisiana. However, the limitation results in an allowable credit of only \$5,000, calculated as if the \$100,000 earned in New York was taxable in Louisiana, resulting in a tax liability to the State of Louisiana of \$5,000. Without the limitation found in La. R.S. 47:33(A)(5)(a), Louisiana would be deprived of the taxes it is owed on the resident's Louisiana source income. The logic and purpose of the limitation found in La. R.S. 47:33(A)(5)(a) is clear and sound.

Turning to the facts of the instant case, it is undisputed that the income (in the form of a capital gain) earned by the Taxpayer in Arkansas was \$120,961.00. The dispute in this case centers on the calculation of the limitation under La. R.S. 47:33(A)(5)(a), with the Department advancing the position that the "income earned" in Arkansas is one-half ($\frac{1}{2}$) of that amount, or \$60,296.00, since that was the "tax base" used by Arkansas in calculating the amount of Arkansas tax due. We disagree with the Department's position. The full amount of the gain was included in Louisiana's tax calculation, and the limitation should be likewise be based on the Louisiana tax on that income.

La. R.S. 47:33(A)(5)(a) limits the credit for taxes paid to other states to the tax that would have been due the State of Louisiana if the "income earned" in the other

state had been earned in Louisiana. We find that the income “earned” by the Taxpayers in Arkansas for purposes of La. R.S. 47:33 was \$120,961.00. We further find that the 50% exclusion allowed by Arkansas is simply a component of the calculation of the tax due the State of Arkansas by the Taxpayers’ on their “income earned” in Arkansas. There is no dispute that had Arkansas merely reduced its income tax rate in half on capital gains instead of allowing a 50% capital gain exclusion, the Taxpayers’ Arkansas tax liability would have been the same and the credit would not have been limited by La. R.S. 47:33(A)(5)(a). We note that the credit¹ taken by Taxpayers did not reduce the taxes otherwise due the State of Louisiana on Taxpayers’ Louisiana source income. On this issue, we find in favor of the Taxpayer.

Finally, Taxpayers’ included in the calculation of their credit the \$189.00 penalty paid to Arkansas on the failure to make estimated payments. We find that this payment is not a payment of “income taxes imposed and paid to another state” for purposes of La. R.S. 47:33. On this issue, we find in favor of the Department and reduce the credit taken by the Taxpayers from \$3,367.00 to \$3,178.00.

Thus signed in Baton Rouge, Louisiana, this 12th day of January, 2023.

For the Board:



Francis J. “Jay” Lobrano
Chairman, Louisiana Board of Tax Appeals

¹ See discussion below - the Taxpayer improperly included the \$189.00 estimated tax penalty as taxes paid to the State of Arkansas in Taxpayers’ credit calculation. This was an error.