

NO. CV 03 052 4331

KENNETH F. DEYO, JR.

: SUPERIOR COURT

: TAX SESSION

v.

: JUDICIAL DISTRICT OF :
NEW BRITAIN

PAMELA LAW, COMMISSIONER OF
REVENUE SERVICES

: SEPTEMBER 27, 2004

MEMORANDUM OF DECISION

The issue in this tax appeal is whether a resident of the state of Connecticut is required to file and pay the state income tax for a particular tax year when that resident has not filed a federal tax return for that same year.

The facts of this case are not in dispute. The plaintiff, Kenneth F. Deyo, Jr. (Deyo), a resident of the state of Connecticut living in Wolcott, Connecticut, earned over \$120,000 during the calendar year of 2001. Deyo did not file a federal income tax return or a Connecticut income tax return for that year. Deyo did not file a federal income tax return because, as stated in his brief, he “determined that the income he received in 2001 was completely excluded for federal income tax purposes, and therefore, no federal income tax return was required to be filed under [26 U.S.C. § 6012.]” (Plaintiff’s Post-Trial Memorandum, dated August 27, 2004, p. 3.)¹ Because Deyo did not file a Connecticut income tax return, the defendant, commissioner of revenue services (Commissioner), created a return for him based on information obtained from the Internal Revenue Service. After determining that Deyo earned income in 2001 that was subject to the Connecticut income tax, the Commissioner issued a deficiency assessment against him in the amount of \$5,211.42, plus penalty and interest. This assessment was issued by notice dated August 15, 2003. On September 29, 2003, Deyo filed a protest of the deficiency assessment with the appellate division of the department of revenue services. The assessment was upheld on October 27, 2003. Deyo then filed the present appeal pursuant to General Statutes § 12-730.

The plaintiff claims that the starting point for the preparation and filing of a Connecticut state income tax return is the federal adjusted gross income reported on the

¹For some reason, not apparent to this court, the plaintiff claims that “[t]here exists no federal income tax assessment for the year 2001 against [p]laintiff or his wife. There have been no changes to [p]laintiff’s self-assessment of zero federal income tax liability for the 2001 tax year. Plaintiff’s 2001 federal income tax liability has not been ‘changed or corrected by the United States Internal Revenue Service or other competent authority’, as explained by [General Statutes] § 12-727 and related regulations. Therefore, no provision of [General Statutes] § 12-727 is presently applicable.” (Plaintiff’s Post-Trial Memorandum of Law, dated August 27, 2004, p.10.)

taxpayer's federal 1040 income tax return. The plaintiff claims that until he has filed a federal 1040 income tax return, the Commissioner has no authority to require the plaintiff to file a state tax return or to pay a tax on income earned for that particular tax year. The plaintiff further states "[n]either [the department of revenue services] nor Connecticut courts have any authority or jurisdiction to make a federal income tax return for [p]laintiff. The Congress of the United States has given authority only to the Secretary of the Treasury of the United States or his delegate to properly make and sign a required federal income tax return if none has been made by the individual." (Plaintiff's Post-Trial Memorandum of Law, dated August 27, 2004, p. 11.)²

The plaintiff's position is that the filing of a federal income tax return is a prerequisite to the filing of a Connecticut income tax return, and until a federal income tax return has been filed, there is no obligation on the plaintiff to file a state return. We disagree.

If a resident of Connecticut has taxable income, that income is subject to the state income tax irrespective of whether that taxpayer files a federal income tax return. Our taxing statutes make clear that Connecticut taxable income is not federal taxable income. General Statutes § 12-701 (a) (8) defines Connecticut taxable income to mean "the Connecticut adjusted gross income of a natural person with respect to any taxable year reduced by the amount of the exemption provided in section 12-702." Connecticut

²The plaintiff cites 26 U.S.C. § 6020 (b), titled "Returns prepared for or executed by Secretary", which states: "Execution of return by Secretary. (1) Authority of Secretary to execute return. If any person fails to make any return required by any internal revenue law or if any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise." (See Plaintiff's Post-Trial Memorandum of Law, dated August 27, 2004, p. 11.)

adjusted gross income is defined in § 12-701 (a) (20) as adjusted gross income modified by income that may be taxable by the state but not taxable by the federal government, or vice versa. Finally, § 12-701 (a) (19) defines adjusted gross income to mean “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.” It is the reference in § 12-701 (a) (19) to a federal income tax return that the plaintiff misconstrues in making his argument.³ § 12-701 (a) (19). Adjusted gross income as reported on an individual’s federal income tax return is merely a starting point for determining his or her Connecticut adjusted gross income. The plaintiff’s interpretation would require reading into § 12-701 (a) (20) that Connecticut adjusted gross income is a function of federal adjusted gross income. It is not. The meaning of this statute is clear and unambiguous and devoid of any other interpretation. See Public Acts 2003, No. 03-154.⁴

We note that General Statutes § 12-735 (b) provides that if a taxpayer has not filed a state income tax return within the time required by statute, “the commissioner may make such return at any time thereafter, according to the best information obtainable and according to the form prescribed.” Further, if a taxpayer has not filed a state income tax return, § 12-701 (a) (12) requires the taxpayer to pay 90 percent of the tax due for that calendar year. The plaintiff, in this action, has done neither. It is no answer for the plaintiff to say that since he has not filed a federal income tax return that he need not file a Connecticut income tax return. The power of the federal government to tax and the

³We also note that the plaintiff’s argument ignores the term “properly reported” as used in

⁴Public Act 03-154, recently enacted, directs courts “to give effect to the plain and unambiguous words of a statute.” Alvord v. Commissioner of Motor Vehicles, 84 Conn. App. 302, 308-309, 853 A.2d 548 (2004).

power of the state government to tax are not inextricably tied together. They are separate and distinct taxing powers. Kellems v. Brown, 163 Conn. 478, 487, 313 A.2d 53 (1972), appeal dismissed, 409 U.S. 1099, 93 S. Ct. 911, 34 L. Ed. 2d 678 (1973).

The burden is on the plaintiff, as the taxpayer, to show that the Commissioner was in error in making a deficiency assessment. Leonard v. Commissioner of Revenue Services, 264 Conn. 286, 302, 823 A.2d 1184 (2003). This he has failed to do.

Accordingly, the plaintiff's appeal from the action of the Commissioner is dismissed. Judgment may enter in favor of the defendant Commissioner.

Arnold W. Aronson
Judge Trial Referee