

14-22

10/30/2014

In Re: Susan Saidel

Docket No: 36WMREFZZ9571

Statement of Record:

1. Susan Saidel (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on October 2, 2013 requesting a refund of a Philadelphia Wage Tax overpayment for the year 2009.
2. A public Hearing before a Tax Review Board Master was scheduled for April 9, 2014.
3. At the conclusion of the hearing, the decision of the Master, as ratified by the TRB was to deny the petition.
4. Petitioner requested and was granted a rehearing before the TRB.
5. A public hearing was scheduled for August 7, 2014. At the conclusion of the hearing, the Board announced its decision to deny the refund request and grant a credit for the requested amount.
6. The City of Philadelphia filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

1. Petitioner filed a Petition for Appeal requesting review of a refund request denied by the Philadelphia Department of Revenue for the tax year 2009. In the alternative, Petitioner requested a credit on her account equal to the amount of her refund request.
2. Petitioner's employer has withheld Philadelphia Wage Tax from her salary during her employment.
3. Beginning in 2009, Petitioner's employer withheld more Wage Tax than was actually owed by Petitioner.
4. The overpayment amounts were small and therefore Petitioner did not realize the amount of Wage Tax being withheld from her salary was incorrect.
5. On or about February 17, 2010, Petitioner's employer filed its Annual Reconciliation of 2009 Employer Wage Tax showing as an overpayment the amount of tax that was the subject of Petitioner's refund appeal.
6. On or about August 9 2013, Petitioner filed a petition with the Philadelphia Department of Revenue for a refund of the overpayment for the year 2009.
7. The refund request for the 2009 overpayment was denied as beyond the statute of limitations.
8. There was no dispute that Petitioner's Wage Tax was overpaid for the year 2009.

Conclusions of Law:

The Philadelphia Code Chapter 19-1703 provides the parameters for taxpayer refunds as follows:

*19-1703. Refunds.*

*(1) (a) The Department of Revenue may grant a refund, in whole or in part, upon determination that a tax, water or sewer rent, license fee or other charge, interest or penalty, or any part thereof, has been paid under mistake of law or fact, or under an invalid law...*

*(d) Every petition for refund of moneys collected by the Department on or after January 1, 1980, for or on behalf of the City or the School District of Philadelphia, including but not limited to any tax, water or sewer rent, license fee or other charge, and interest and penalties thereon, shall be filed with the Department within 3 years from the date of payment to the City or the School District of Philadelphia or the due date, whichever is later.*

The City's position was that relying on The Philadelphia Code § 19-1703, Petitioner could not be granted a refund or credit as the refund request filed by Petitioner was beyond the 3 year limit imposed by that section of the Code.

The Philadelphia Code is silent on the issue of credits for overpayments. The City takes the position that refunds and credits are interchangeable as concepts or principles and therefore where the Code limits refunds, the same limitation for credits is implied. There is no express limitation in the ordinance using the term "credit".

It is the finding of the Tax Review Board that a refund is not the same thing as a credit. The 2 words are not synonyms. In application as well, credits are not identical to or interchangeable with refunds and the TRB disagrees with the City interpretation that The Philadelphia Code section that limits refunds also limits credits.

The public policy supporting statutes of limitations is that governments are entitled to use these limitations as tools for budgetary planning and certainty. Unlimited refund opportunities would create instability in this planning process.

The same is not true for credits which are prospective in nature and can be planned for going forward.

"Under the principles of the Statutory Construction Act, 1 Pa C.S. §1903(a), the language of local ordinances, like that of statutes, should be given its plain meaning." *Lawrence G. Spiegelman, Inc. v. Twnshp of Cheltenham*, 601 A.2d 1310, 1317 (Pa Cmwltth 1992). Had the City Council meant to include a limitation on credits it could easily have been included in the ordinance language.

Although the Tax Review Board is not asserting an ambiguity as to whether credits are covered in the refund ordinance, to the extent that there is uncertainty in the language or interpretation of The Philadelphia Code Chapter 19-1703, it is well settled that any ambiguity in a taxing statute is to be construed in the light most favorable to the taxpayer. *Township of Derry v. Swartz*, 21 Pa. Cmwlth 587 (1975).

As further support for the determination that credits and refunds are distinguishable, the TRB looked to the majority's memorandum opinion in the case of *City of Philadelphia v. Tax Review Board to the use of Keystone Health Plan East*, 97 C.D. 2013 (Pa. Cmwlth), which also found that refunds and credits were not interchangeable and Section 19-1703(1)(d) of the Philadelphia Code, which outlines a three-year statute of limitations for making a refund request, applies only to refunds,

Therefore the decision of the Tax Review Board was to grant a credit to Petitioner in the amount of the Wage Tax overpayment for 2009.

Concurred:

Nancy Kammerdeiner, Chair

Christian DiCicco, Esq.

Joseph Ferla

George Mathew, CPA