

14-19

October 6, 2014

In Re: John Braun

Docket No: 36WMREFZZ9584

STATEMENT OF RECORD:

1. John Braun filed a Petition for Appeal on July 9, 2013 requesting review of a denial by the Philadelphia Department of Revenue (Revenue) of a refund request for Wage Tax for the tax year 2009.
2. A public hearing before a Tax Review Board (TRB) Master was scheduled for December 11, 2013. The decision of the Master, as ratified by the TRB, was to deny the petition.
3. Petitioner requested, and was granted, a rehearing before the full TRB.
4. A public hearing before the TRB was scheduled for April 15, 2014. At the conclusion of the hearing, the matter was taken under advisement for further deliberation by the Board.
5. A public hearing was scheduled for May 13, 2014 for the Board to announce its decision. At that hearing the TRB announced its decision to grant the petition.
6. The City of Philadelphia Department of Revenue filed an appeal to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner was a non-resident of Philadelphia for all periods in question.
2. Petitioner's job for a Philadelphia based company required that he work a portion of his time in Philadelphia and a portion of his time outside of Philadelphia.
3. Petitioner's employer withheld and remitted Philadelphia Wage Tax on _____ of his salary, without regard for the hours worked outside of Philadelphia.
4. Petitioner's employer filed its required Wage Tax Reconciliation form each year with the City of Philadelphia by the March 31 deadline.
5. Petitioner was not required to file a Wage Tax return, reconciliation form, or any paperwork to report his Wage Tax payments.
6. For the tax years, 2005 through 2008 submitted separate individual refund requests. Each year's refund request was submitted _____ years after the tax year for which the refund was being sought and each submitted on or about April 15th of that _____ year when Petitioner filed his other tax returns.
7. Petitioner received the requested refunds for 2005 through 2008 from Revenue.

8. For the 2009 tax year, Petitioner submitted a refund request on or about April 7, 2013.
9. Petitioner's refund request for 2009 was denied. The reason given by the Department of Revenue was the refund request was not filed timely.
10. The City's position was that because the Philadelphia Code requires refund requests to be filed within _____ years of the latter of the payment or due date, the latest due date for a refund request for the 2009 Wage Tax was the due date of the Annual Reconciliation Form for 2009 which had a due date of March 1, 2010.

Conclusions of Law:

Petitioner's employer withheld more Wage Tax than was owed by Petitioner for each of the tax years from 2005 through 2009. Beginning in 2009, Petitioner annually submitted a Wage Tax refund request to the Philadelphia Department of Revenue for the Wage Tax overpayment accounted for with the Annual Reconciliation Form due _____ years prior and filed by his employer. In each year, he submitted the refund request on or about April 15th, when filing his tax returns for various federal and local tax obligations.

For the tax years, 2005, 2006, 2007 and 2008, Petitioner received his refund of overpaid Wage Tax from the City of Philadelphia. In 2009, the request was denied as untimely and beyond the 3 year statute of limitations for refunds as set forth in The Philadelphia Code Chapter 19-1703. These facts are not in dispute.

The Philadelphia Code Chapter 19-1703 provides 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.

Petitioner routinely requested refunds of over payments for Wage Tax as part of his annual tax filing process and routinely received these refunds over a period of _____ years. There was no dispute that for the year under appeal, 2009, Petitioner's employer withheld throughout that year more Wage Tax from Petitioner's wages than was ultimately owed.

Petitioner filed his refund request for the 2009 overpayment on or about April 7, 2013.

In calculating the one year limitation for refunds set out by The Philadelphia Code, Revenue determined that Petitioner's request for the 2009 tax year was approximately 30 days late. Petitioner had no knowledge of or responsibility for filing the 2009 Wage Tax Annual Reconciliation form that, Revenue argued, determined the latest due date for the tax. In addition, for prior years, Petitioner had filed refund requests with Revenue using the same filing schedule and had received the refunds requested.

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 two 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 Cmwlth 1992). Had the Philadelphia 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 found that refunds and credits were not interchangeable and that Section 19-1703(1)(d) of The Philadelphia Code, which outlines the three-year statute of limitations states that it is a limitation for refunds and does not mention credits.

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

Joseph Ferla

Christian DiCicco, Esq.

George Mathew, CPA