

June 25, 2014

In Re: Mark Pompei

Docket No: 36WMREFZZ9615

Statement of Record:

1. Mark Pompei (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on July 16, 2012 for a refund of Wage Tax overpaid for the year 2008 in the amount of
2. A public hearing before a Tax Review Board Master was scheduled for November 2, 2012. 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 Tax Review Board.
4. A public hearing before the TRB was scheduled for April 18, 2013 and continued at Petitioner's request.
5. A public hearing before the TRB was scheduled for June 18, 2013 and continued at Petitioner's request.
6. A public hearing before the TRB was scheduled for October 8, 2013 and continued at Petitioner's request.
7. A public hearing before the TRB was scheduled for January 21, 2014 and continued at Petitioner's request.
8. A public hearing before the TRB was scheduled for March 4, 2014. At the conclusion of the hearing, the TRB announced its decision to grant the petition and direct the Philadelphia Department of Revenue to issue a credit of
9. The City of Philadelphia Department of Revenue filed an appeal to the Court of Common Pleas.

Findings of Fact:

1. Petitioner filed a Petition for Appeal requesting a refund of Philadelphia Wage Tax withheld by his employer and paid to the City of Philadelphia for the year 2008. The amount of the refund requested was
2. Petitioner works for a company that does business in Philadelphia and provides him with office space in Philadelphia.
3. Petitioner spends a portion of his working time outside of Philadelphia.
4. Petitioner's employer withheld and remitted Philadelphia Wage Tax that did not accurately reflect the actual tax amount due for the time worked in Philadelphia. Petitioner's employer withheld and remitted an excess amount of Wage Tax for Petitioner.
5. This was repeated for several years causing Petitioner to routinely request and ultimately receive Wage Tax refunds from the City of Philadelphia Department of Revenue ("Revenue").

6. For the tax year 2008, payments were made throughout the year. The annual reconciliation for the 2008 Wage Tax was filed by Petitioner's employer on March 2, 2009.
7. Petitioner filed his request for a refund of the 2008 overpayment with Revenue on April 13, 2012, 4 month and 11 days beyond the 3 year statute of limitation for refund requests as calculated by the City using the later of the tax payment date and Annual Reconciliation filing date as the date on which the 3 year statute of limitation period should begin .
8. This request for a refund was denied by Revenue as beyond the 3 year limitation provided in The Philadelphia Code for requesting a refund.

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.*

Petitioner routinely requested refunds of over payments for Wage Tax as part of his annual tax filing process and routinely received these refunds. There was no dispute that for the year under appeal, 2008, Petitioner 's employer withheld throughout that year more Wage Tax from Petitioner's wages than was ultimately owed. The overpayment totaled

Petitioner ultimately filed his refund request for the 2008 overpayment on April 13, 2012. In calculating the 3 year limitation for refunds set out by The Philadelphia Code, Revenue correctly determined that Petitioner's request was approximately 11 days too late.

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 Cmwlth 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 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 2008.

Concurred:

Nancy Kammerdeiner, Chair

Christian DiCicco, Esq.

Joseph Ferla

George Mathew, CPA