

December 29, 2010

**In re: Eric Talley**

**Docket No: 36WMREFZZ9704**

**STATEMENT OF RECORD:**

1. Eric Talley (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on July 9, 2008 requesting a refund for Philadelphia Wage Tax withheld by his employer for the tax year 2004.
2. A public hearing was scheduled for June 30, 2009 and continued at Petitioner's request.
3. A public hearing was held on October 27, 2009 and continued at the hearing to allow the City to provide documentation to Petitioner regarding the tax computation.
4. A public hearing was held on January 14, 2010 and continued to allow the City the opportunity to review the amended Petition introduced by Petitioner.
5. A public hearing was held on August 12, 2010. At the conclusion of the hearing, the Tax Review Board announced its decision to deny the Petition.
6. Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

**FINDINGS OF FACT:**

1. Petitioner's original Petition for Appeal filed on July 9, 2008 requested a refund of Wage Tax withheld by his employer, the U.S. Internal Revenue Service (IRS), on wages earned in the tax year 2004 and designated as deferred compensation. The Wage Tax was withheld by the IRS on Petitioner's salary that he directed be deposited in a deferred compensation or 401(k) type plan.
2. At the public hearing before the TRB on January 14, 2010, Petitioner requested to amend his original petition to include an appeal and request for refund of all Philadelphia Wage Tax withheld and remitted from his wages in 2004 by his employer to the City of Philadelphia. This request to amend his petition was accepted by the TRB.
3. Petitioner also raised a challenge to the percentage rate of 4.4625% withheld. He claimed that this percentage had not been legislatively enacted by the Philadelphia City Council using the proper procedures and therefore was invalid.
4. Petitioner introduced his W-2 tax form for 2004. He directed the TRB to "Box 18" labeled "Local wages, tips, etc." He testified that it was his belief that since Box 18 did not have any dollar amount listed in it (it was empty), the City was not entitled to any Wage Tax on his earnings and therefore the IRS had erred in withholding the tax and remitting it to the City.

**CONCLUSIONS OF LAW:**

The Philadelphia Wage Tax is imposed pursuant to The Philadelphia Code Chapter 19-500. The City Wage Tax, also called the Earnings Tax, is a tax on salaries, wages, commissions and other compensation paid to an employee who is employed by or renders services to an employer.

The City of Philadelphia Income Tax Regulations in Article II Section 201, defines the scope of the tax as follows:

An annual tax for general revenue purposes is imposed on residents of Philadelphia, regardless of the place where their services are performed, and on non-residents of this City, for work done or services rendered in Philadelphia, on salaries, wages, commissions and other compensation earned.

All Philadelphia residents owe the City Wage Tax regardless of where they perform services. Non-residents who perform services in Philadelphia must also pay the Wage Tax...Pursuant to The Philadelphia Code Chapter 19-1501 (10) the tax is imposed on:

Salaries, Wages, Commissions and Other Compensation: All salaries, wages, commissions, bonuses, incentive payments, fees and tips that may accrue or be received by an individual, whether indirectly or through an agent and whether in cash or in property, for services rendered.

In addition, “(e)ach employer within the City who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct at the time of payment thereof, the tax imposed by this Chapter on the salaries, wages, commissions and other compensation due from the said employer to the said employee... “. The Philadelphia Code Chapter 19-1504.

Petitioner questioned the withholding of the Wage Tax by his employer for both the deferred compensation and total compensation portions of his salary.

Under The Philadelphia Code Chapter 19-1500, all wages are subject to the Wage Tax unless specifically exempted or excluded by the ordinance.

1. Petitioner provided no evidence by way of testimony or documentation to establish that he was not subject to the Philadelphia Wage Tax in 2004. He neither stated nor proved that he was not a Philadelphia resident and that he was working outside of Philadelphia.

His statements were limited to the discussion of the W-2 form from his employer and the failure to list his wages in Box 18. It is the finding of the Tax Review Board that any mislabeling or minor failure of the W-2 form is immaterial and irrelevant to determining whether Petitioner is subject to the Wage Tax. Petitioner lived in Philadelphia, earned wages, and correctly had the Philadelphia Wage Tax withheld from those wages, as is required by the City ordinance.

2. As stated in the November 26, 2008 Tax Review Board Opinion for **Ace American Insurance Company**, Docket No: 36WMMERZZ9625, and affirmed on November 19, 2009 by the Philadelphia Court of Common Pleas in Ace American Insurance Company vs. Tax Review Board, appeal to Pa. Commonwealth Court, Docket Number: 2446 CD 2009, discontinued on 12/20/2010,

The City of Philadelphia taxes all types of deferred compensation regardless of the taxation decisions of the federal government and the Commonwealth of Pennsylvania to exclude deferred compensation from the definition of “compensation” and to provide different rules for taxing this income. The City is not required to tax this compensation in the same way as the federal or state governments.

It is the finding of the Tax Review Board that the Philadelphia Wage Tax ordinance and regulations do not provide for Wage Tax deferral on deferred compensation of this nature.

There are certain specific exclusions set forth in The Philadelphia Code Chapter 19-1501(10) and in the City of Philadelphia Income Tax Regulations Section 104. Earned income deposited in deferred compensations plans such as those provided by Petitioner are not included in these exclusions.

Again, Petitioner did not provide evidence to meet his burden of proof to establish that the deferred compensation plan he was enrolled in was excluded or exempted from the Wage Tax.

3. Petitioner stated his belief that the Wage Tax had not been legally enacted by City Council and was therefore invalid, at the very least, for the actual percentage amount withheld from his wages.

City Council passed the Philadelphia Income Tax Ordinance on December 13, 1939. The constitutionality of this ordinance was sustained in *Dole v. Philadelphia*, 337 Pa. 375.

The Philadelphia Code Chapter 19-1502 contains the legislative enactments authorizing the Wage Tax rates. The Wage Tax rate between 2001 and 2004 for residents of the City was 2.96%.

The Philadelphia Code Chapter 19-2801 provides the Legislative Acknowledgement that the General Assembly of the Commonwealth of Pennsylvania enacted the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class (Act of June 5, 1991, P.L. 9, No. 6), known as the "Act". The Act, which inter alia creates the Pennsylvania Intergovernmental Cooperation Authority, known as PICA, "declares it to be the public policy of the Commonwealth to exercise its retained sovereign powers with regard to taxation, debt issuance and matters of State-wide concern in a manner calculated to foster the fiscal integrity of cities of the first class to assure that these cities provide for the health, safety and welfare of their citizens; pay principal and interest owed on their debt obligations when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper financial planning procedures and budgeting practices.

As part of The Philadelphia Code Chapter 19-2801(5) City Council further acknowledges that the Act:

(a) Specifically authorizes the imposition and pledge of any combination of the following taxes:

(i) a sale and use and hotel occupancy tax;

(ii) a realty transfer tax such as is now or as may be hereafter enacted for general revenue purposes of the City pursuant to Section 1301(b) of the Act of December 13, 1988 (P.L. 1121, No. 45), known as the Local Tax Reform Act; and

(iii) *a tax on salaries, wages, commissions, compensation or other income received or to be received for work done by residents of the City, imposed pursuant to the provisions of the Sterling Act.* (Emphasis added)

Section 19-2803 of the Philadelphia Code describes the imposition of the Pennsylvania Intergovernmental Cooperation Authority Tax on Wages and Net Profits as follows:

(1) An annual tax to provide revenues for the purposes of the Pennsylvania Intergovernmental Cooperation Authority is imposed as follows:

(a) On salaries, wages, commissions, and other compensation earned by residents of Philadelphia on and after July 1, 1991 at the rate of one and one-half percent.

Therefore, in 2004 the 2.96% Wage Tax imposed by the City of Philadelphia in The Philadelphia Code 19-1502 **plus** the 1.5% imposed by the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class in The Philadelphia Code Chapter 19-2803 created a total for the City Wage Tax of 4.4625%.

It was the finding of the Tax Review Board that Wage Tax was correctly withheld from Petitioner's wages and 4.4625% was the correct percentage to be withheld as due and owing from Petitioner.

Concurred:

Monique DeLapenha, Esq., Chair

T. David Williams, Esq.

Joseph Ferla

George Mathews, CPA