

January 28, 2019

IN RE: Zilka, Diane

Docket No: 36WMREFZZ9447 and 36WMREFZZ9445

Statement of Record:

- 1) Diane Zilka (hereafter "Petitioner") filed a Petition for Appeal with the Office of Administrative Review (OAR) on October 6, 2017. The petition requested a review of the September 26, 2017 partial refund denial by the Department of Revenue. Petitioner had requested a refund for Philadelphia wage taxes withheld from years 2013 to 2015, docket number 36WMREFZZ9447 and 2016, docket number 36WMREFZZ9487.
- 2) A public hearing before the Tax Review Board was held on April 24, 2017.
- 3) Petitioner is represented by attorneys, Mr. Stewart Weintraub from Chamberlain Hrdklicka.
- 4) The hearing was continued for additional submissions from the parties and rescheduled for September 20, 2018.
- 5) The Tax Review Board denied the petition.
- 6) Petitioner has filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

- 1) At issue is the Department of Revenue's partial denial of a refund requested by Petitioner for years 2013-2015 and 2016 for income taxes paid to the State of Delaware.
- 2) During the periods in question, the Petitioner remained a resident of the City of Philadelphia, Pennsylvania and worked as an attorney in the City of Wilmington, Delaware.
- 3) Petitioner paid income taxes to both the City of Wilmington and State of Delaware. Additionally, the Petitioner's employer withheld Philadelphia city wage taxes.
- 4) Petitioner requested a refund of [REDACTED] for Philadelphia Wage Taxes paid for years 2013 to 2015 based on credits for income taxes paid to the City of Wilmington and the State of Delaware. The Department of Revenue granted a credit for taxes paid to City of Wilmington but not those paid to the State of Delaware and issued a partial refund of [REDACTED] the remainder, [REDACTED] was denied.
- 5) For the year 2016, Petitioner requested a refund for income taxes paid to the City of Wilmington and the State of Delaware. Again, the Department of Revenue granted a partial refund, allowing credits for income taxes paid to the City of Wilmington but not to the State of Delaware. The amount at issue remains [REDACTED]

Conclusions of Law:

The Philadelphia Code Chapter 19-1703(7) provides that a denial of refund request by the Department of Revenue may be appealed to the Tax Review Board. "Any decision of the Department [of Revenue] denying a refund in whole or in part may be appealed to the Tax Review Board by the petitioner within 90 days after the mailing of notice of such decision to the petitioner by the Department".

A recent US Supreme Court decision, *Maryland v. Wynne*, 135 S. Ct. 1787 (2015), held that Maryland's personal income tax scheme, which consisted of state and county income taxes, violated the dormant Commerce Clause as Maryland did not offer its residents full credit against the income taxes that they

pay to other States. Specifically, Maryland provided a credit for state income taxes paid to other states but not credit for taxes paid for county taxes. This resulted in what the Court believed was “double taxation of income earned out of the state and that discriminated in favor of intrastate over interstate economic activity.” *Id.* at 1795. *Wynne* has raised the issue of whether the City of Philadelphia’s denial of credits for taxes paid to the State of Delaware against the Petitioner’s City Wage Tax liability is unconstitutional and violates the Commerce Clause of the Constitution.

Petitioner’s argument asserts that the City of Philadelphia’s tax scheme is unconstitutional and discriminatory as it causes the Petitioner to pay multiple taxes, both Delaware and Philadelphia state and city taxes, without providing full credits in return. The Petitioner’s Brief, highlights this in Figures 1 and 2, detailing the differences in 2014 tax rates and impact on Petitioner; higher tax rates under the City’s scheme for residents working-out-of-state versus in-state. *Petitioner’s Brief*, Pg. 9. The Petitioner explains, “As a result of this taxing position, this Petitioner, a Philadelphia resident working interstate, is being taxed at almost a 2% higher rate than her identical intrastate counterpart.” *Id.* at 10.

In response, City’s argument focused on distinguishing the facts of the *Wynne* case to those of the Petitioners and explaining how Philadelphia’s tax scheme is in fact constitutional. The *City’s Brief* explained in *Wynne*, “Maryland’s state income taxes consists of two parts: the “state” tax and the so-called “county” tax...The so-called Maryland “county” tax, which is administered, collected, and distributed by the Comptroller of Maryland, is a state tax.” *Maryland v. Wynne*, 135 S. at 1792. “The Wynnes challenged Maryland’s refusal to allow any credit against the so-called “county” tax portion of the Maryland state income tax.” *City’s Brief*, pg. 4 The City asserts that the *Wynne* Court decision found Maryland’s tax scheme unconstitutional because it failed to provide residents “full credits for income taxes paid to other states against Maryland’s two-part state tax” and not those of local taxing authorities. *Id.* at 5.

In fact, the City argues that the Petitioner’s application of *Wynne* is “beyond what the Court intended and what the Constitution requires.” *Id.* As explained through the testimony of Philadelphia Department of Revenue’s Deputy Commissioner David Dorman, the City’s wage tax is administered, collected, and distributed by the Philadelphia Department of Revenue, *Transcript*, pg. 82:12-23 and 84:21-85:12. Further, Philadelphia issues credits against its city wage taxes for the income taxes paid to other cities. Unlike *Wynne*, the Philadelphia City wage tax is not part and has no connection to the state taxes collected by the Commonwealth of Pennsylvania. Therefore, credits against the income tax liability for City wage taxes should not be provided for state income taxes paid to other states.

The Tax Review Board found that the City’s arguments distinguishing the *Wynne* case facts from that of the Petitioner’s was very persuasive. Specifically, by highlighting that the Supreme Court determined that Maryland’s tax scheme was unconstitutional as it failed to give full credits for state taxes paid in a state with a “two-part state tax” and that the City did in fact issue refunds/credits for taxes paid to other cities, as it did in the case of the Peitioner. Further, the Tax Review Board find the City’s simple ‘apple to apples’ approach; state taxes to state taxes and local taxes to local taxes; a reasonable policy in regard to the application of credits since the *Wynne* decision.

Therefore, the decision was to deny the petition.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

Gaetano Piccirilli Esq.

George Matthew

Ryan Boyer