

November 21, 2019

IN RE: James P. Smith
DOCKET NO: 36WMREFZZ9416

STATEMENT OF RECORD:

1. James P. Smith (hereafter "Petitioner") filed a Petition for Appeal with the Office of Administrative Review (OAR) on September 20, 2018. The petition requested a review of the August 23, 2018 refund denial by the Department of Revenue. Petitioner had requested a refund for Philadelphia wage taxes withheld in 2017.
2. A public hearing was scheduled before a Tax Review Board Master on December 10, 2018 and the decision of the Master as ratified by the Board, was to grant Petitioner's petition.
3. The City of Philadelphia requested and was granted a rehearing.
4. A hearing was scheduled before the full Tax Review Board on August 6, 2019. At the conclusion of that hearing, the Board announced its decision to grant Petitioner's request.
5. The City of Philadelphia filed an appeal to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner was a non-resident of Philadelphia for the tax period in question.
2. Petitioner's job for a Philadelphia based company required that he work in Philadelphia during his employment.
3. Petitioner's employment was terminated on January 13, 2017 and Petitioner entered into a Severance Payment Agreement with his employer.
4. Petitioner's employer withheld Philadelphia city wage taxes from the subsequent severance payments that he received.
5. Petitioner requested a refund of ~~Philadelphia~~ Philadelphia wage taxes paid for the 2017 tax year.
6. Petitioner's refund request was denied. In a letter dated August 23, 2018, the Department of Revenue listed the following reasons for the denial:
 - a. The petitioner failed to comply with the request.
 - b. The employer letter provided did not support the claim on the petition.
 - c. Petitioner did not put severance pay on a separate petition.
 - d. The employer letter states that the income paid post January 13, 2017 was severance and therefore subject to the wage tax.
7. Petitioner argued that he had not worked or lived in the City when the taxes were withheld.
8. The City's position was that the severance payments are taxable under the Philadelphia Code.

CONCLUSIONS OF LAW:

Article II Section 201 of the Philadelphia Income Tax Regulations provides that "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, and of non-residents of this City, to the extent conducted in Philadelphia". Furthermore, Section

203(h)(2) states that "benefits accruing by virtue of employment, such as termination or severance payments" are subject to the Philadelphia wage tax.

The City asserted that the severance payments the Petitioner received were "tied to the years that [Petitioner] rendered services here in Philadelphia" and therefore, subject to the wage tax. (Notes of Testimony, p. 18, l. 2-2). The City provided a letter from Michael A. Strunk, the payroll manager for Petitioner's employer dated August 17, 2018 which states that Petitioner's severance was based on the number of years in which Petitioner worked at the company and his internal job grade.

However, the Board noted that in order to receive the severance payments, Petitioner had to agree to and sign a Severance Agreement of Release. Chairwoman Nancy Kammerdeiner specifically observed that "in order to get this severance payment, [Petitioner] had to agree to this total agreement...it wasn't as if he were entitled to the severance pay...just because he worked there for X number of years." (Notes of Testimony, p. 18, l. 13-20).

It was the opinion of the Board that the severance payments were a part of the Severance Agreement of Release and that had Petitioner refused to sign the agreement, he would not have been entitled to the payments. As such, it appears that the severance payments are not tied to the years that Petitioner worked in Philadelphia.

Therefore, the decision of the Tax Review Board to grant Petitioner's request for a refund of the Philadelphia wage taxes withheld in 2017 should stand.

Concurred:

Nancy Kammerdeiner, Chair

Gaetano Piccirilli, Esq.

Joseph Ferla