

**April 5, 2021**

**IN RE: Lastner, Frances Docket No: 36WMREFZZ9424 and 36WMREFZZ9457**

**Statement of Record:**

- 1) Frances Lastner (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board ("TRB") on August 9, 2017. The petition requested a review of the May 20, 2017 refund denial by the Department of Revenue. Petitioner had requested a refund for Philadelphia wage taxes withheld from year 2013, Docket Number 36WMREFZZ9424 in the amount of \$ [redacted] and wage taxes from 2014, Docket Number 36WMREFZZ9457 in the amount of \$ [redacted].
- 2) A public hearing before the Tax Review Board-Master level was held on March 3, 2018. It was granted and then appealed by the City.
- 3) The case was then listed on February 21, 2019. The petitioner requested a continuance and it was granted.
- 4) The case was then listed on January 30, 2020. The Board then held the matter under advisement for briefs, summarizing the main issues to be submitted.
- 5) On December 3, 2020, Tax Review Board read the decision and granted the petitions.
- 6) The City has filed an appeal to the Philadelphia Court of Common Pleas.

**Findings of Fact:**

- 1) The City's Department of Revenue denied the refunds requested by Petitioner for years 2013 and 2014 for wages taxes.
- 2) Petitioner's employers paid wage taxes to City of Philadelphia for the years 2013 and 2014.
- 3) The due date for the annual reconciliation and the payments for wage taxes by the Petitioner's employers was February 28, 2014 and February 28, 2015. They were made timely.
- 4) Petitioner requested a refund of [redacted] of Philadelphia wage taxes paid for 2013 by mailing it on April 13, 2017.
- 5) Petitioner requested a refund of [redacted] for the Philadelphia wage taxes paid 2014 by mailing it on March 30, 2018.

**Conclusions of Law:**

Under Philadelphia Code Chapter 19-1703(d), refund requests must be filed within 3 years.

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, and, where authorized by ordinance, every request for credit on account of moneys collected by the Department for or on behalf of the City or the School District, 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 payment due date, whichever is later.

The Philadelphia Code, Section 19-1703. Refunds and Credits 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”.

There is no dispute in terms of the facts of the case. The testimony of the petitioner as well as the accountant for the City relay identical sequence of events involving the timing of the events of this case. Specifically, Mr. Lastner’s employer’s in both 2013 and 2014 made Wage Tax payments timely to the City of Philadelphia. Under the City of Philadelphia’s Income Tax Regulations, Article III- Returns and Payment of Tax, Section 4:

Annually, on or before the last day of February, every employer who has filed returns of tax withheld and remitted the tax throughout the preceding year, shall be required to file an Employer’s Annual Reconciliation of Philadelphia Wage Tax Withheld, along with a copy of Form W-2 of the Internal Revenue Service for each employee...

Ms. Moricia Cureton of the Department of Revenue’s Refund Unit, testified, “The due date of the annual reconciliation and the payments made by the employer and we grant refunds based on the later date between the two. So, in this case, 2013 should have been filed and received by the 28<sup>th</sup> of February 2104 and the 2014 should have been tiled by February 28, 2015”. (NOT, Pg. 19, Ln. 14-19).

Ms. Lastner, who testified that she is “responsible for the financial affairs start to finish” (NOT, Pg.8, Ln. 2), explained in her testimony that once she came to realization that her husband was eligible for refund for the year 2013, she sent in a request for a refund to the Department of Revenue “within the hour on April 13 [2017]” (NOT, Pg.9, Ln. 19). In 2018, after 5 months of waiting for her husband’s employer to certify documentation, Ms. Lastner files her refund for the year 2014 on March 30, 2018.

Petitioner explains that all times she believed the common- *April 15 Tax Day* -date as the deadline for applying for refund and relays to the Board, “Am I as an employee supposed to have knowledge when my employer is making remittances to the City?” (NOT, Pg.14, Ln. 11-13). Petitioner also explains, the City does not provide any information on the specific due dates for refund petitions to the applicant regarding specific filing dates or other information aside from the 3 years. Additionally, it does not point the applicant in the right direction to an employer for information about when Wage Taxes were paid.

The City’s concise argument of the case hinges on the Philadelphia Code Chapter 19-1703(d) and strict application on the City of Philadelphia’s Income Tax Regulations, requiring the use of the employer’s due date for Annual Reconciliation as the payment due date and not the common April 15<sup>th</sup> Tax Day.

Ultimately, the Board found persuasive the Petitioner’s arguments regarding how a refund petitioner would know to look to an employer’s due dates for Wage Taxes versus the date her taxes were due.

The Board grant the petition.

Concurred:

Nancy Kammerdeiner, Chair

Joseph Ferla

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