

December 18, 2020

IN RE: Michael J. Gonzales  
DOCKET NO: 36EAMERZZ9472

STATEMENT OF RECORD:

1. Michael J. Gonzales (hereafter "Petitioner") filed a Petition for Appeal with the Office of Administrative Review (OAR) on July 24, 2017.
2. A public hearing before the Tax Review Board (TRB) Master was scheduled for October 25, 2017. Petitioner requested and was granted a continuance.
3. A public hearing before the TRB Master was scheduled for February 2, 2018. At that time, the matter was continued.
4. A public hearing before the TRB Master was scheduled for May 18, 2018. Petitioner requested and was granted a continuance.
5. A public hearing before the TRB Master was scheduled for October 22, 2018. At that time, the matter was continued.
6. A public hearing before the TRB Master was scheduled for July 22, 2019. At the conclusion of the hearing, the Master announced its decision to deny the petition. Petitioner was ordered to enter into a payment arrangement with the Revenue Department within 30 days.
7. Petitioner requested and was granted a rehearing before the full TRB.
8. A public hearing before the full TRB was scheduled for May 26, 2020. Petitioner requested and was granted a continuance.
9. A public hearing before the full TRB was scheduled for August 25, 2020. At the conclusion of the hearing, the Board announced its decision to abate 50% of the interest and abate 100% of the penalty contingent on Petitioner entering into a payment arrangement with the Revenue Department within 30 days.
10. The City has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. During the tax years 2011 through 2015, Petitioner resided in Philadelphia. Petitioner worked on a full-time basis outside of Philadelphia. The Wage Tax was not withheld from these earnings.
2. The principal amount due is \$ \_\_\_\_\_ with penalty charges in the amount of \_\_\_\_\_ and interest charges in the amount of \$ \_\_\_\_\_, for a total amount due of \_\_\_\_\_.
3. During the tax years in question, Petitioner filed federal joint tax returns with his wife and used the address 1123 Brandywine Street in Philadelphia, PA where they have established their marital home.
4. Petitioner argued that he is exempt from the Wage Tax because his domicile is in Bensalem, PA where he was raised.
5. The City argued that Petitioner has established domicile in Philadelphia.

CONCLUSIONS OF LAW:

The Philadelphia Wage Tax is imposed on all "residents of Philadelphia" irrespective of the place or places where the services were performed...". *The Philadelphia Income Tax Regulations Section (a) (1)*.

The Philadelphia Income Tax Regulations, Section 101 (m) defines a resident as “an individual... domiciled in the City of Philadelphia”. A “domicile” is defined to be “a place where a person has his true, fixed, permanent home and principal establishment, to which, whenever absent therefrom, he intends to return and continues until another permanent home and principal establishment is acquired.”

Although Petitioner testified that he considered Bensalem his domicile as it is where he was raised and his parents still reside today, he continued to use his Philadelphia address as his permanent address for mail and tax filings. Moreover, Petitioner testified that he and his wife purchased the home located at 1123 Brandywine Street in Philadelphia, PA after they were married. During cross-examination, Petitioner admitted that his wife and children reside at that address and his children attend Central high school in Philadelphia. He admitted that he spends nights with his family at that residence as well.

The City argued that these actions are indicative of Petitioner’s intention to consider Philadelphia his “permanent home and principal establishment” during the periods in question.

The Board concluded that Petitioner’s domicile is in Philadelphia, although the Board recognized that Petitioner may not have fully understood the implications of his actions in establishing Philadelphia as his domicile.

Therefore, the decision of the Board was to abate 50% of the interest and abate 100% of the penalty contingent on Petitioner entering into a payment arrangement with the Revenue Department within 30 days.

Concurred:

Nancy Kammerdeiner, Chair

Ryan Boyer

George Mathew, CPA