

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Philadelphia :

v. :

City of Philadelphia Tax Review Board :
to the use of Keystone Health Plan East, :
Inc. :

City of Philadelphia :

v. :

City of Philadelphia Tax Review Board :
to the use of Keystone Health Plan East, :
Inc. :

City of Philadelphia :

v. :

City of Philadelphia Tax Review Board :
to the use of QCC Insurance Company :

City of Philadelphia :

v. :

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No. 97 C.D. 2013

Appeal of: City of Philadelphia :

City of Philadelphia :

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to the use of QCC Insurance Company :

Appeal of: Keystone Health Plan East, : No. 98 C.D. 2013
Inc. and QCC Insurance Company : Argued: October 8, 2013

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COVEY

FILED: November 18, 2013

The City of Philadelphia (City) appeals from the Philadelphia County Common Pleas Court's (trial court) December 27, 2012 order affirming the Philadelphia Tax Review Board's (Board) decision ordering the City to issue credit to Keystone Health Plan East, Inc. (Keystone) and QCC Insurance Company (QCC) for

overpayment of their 2003 and 2004 Business Privilege Taxes (BPT).¹ The two issues for this Court's review are: (1) whether the trial court properly rejected Keystone and QCC's (collectively, Taxpayers) refund requests as untimely and, (2) whether the trial court erred by upholding the Board's *sua sponte* credit award where Taxpayers' refund requests were untimely. We affirm.

Taxpayers are sibling subsidiaries of parent corporation Independence Blue Cross (IBC) that conduct business in the City. Section 19-2606(2) of the Philadelphia Code requires that BPT returns are filed by April 15th of the year following each year in which a taxpayer did business in the City. Section 19-2610 of the Philadelphia Code mandates that the City's Department of Revenue (Department) promulgate regulations to provide for estimated tax payments to be made concurrently with the filing of any return. Section 202 of the City of Philadelphia BPT Regulations requires taxpayers to make estimated tax payments (equal to 100% of the actual tax due) on or before April 15th of the following year. Section 19-503(3) of the Philadelphia Code provides that if the federal government grants an extension of time for the filing of federal income tax returns, the Board will grant a similar extension.

Taxpayers timely paid their estimated 2003 tax year BPT in April 2004 and paid their 2004 tax year BPT in April 2005, but applied for and received extensions to file their federal income tax and BPT returns, thereby making Taxpayers' 2003 BPT returns due September 15, 2004, and their 2004 BPT returns due September 15, 2005. Keystone filed its 2003 BPT return on September 8, 2004, and its 2004 BPT return on September 8, 2005. QCC filed its 2003 BPT return on September 9, 2004, and its 2004 BPT return on September 9, 2005.

¹ The BPT was recently re-named the Business Income and Receipts Tax.

For federal income tax purposes, Taxpayers participated as members of the IBC-affiliated group. On January 8, 2008, the Internal Revenue Service (IRS) audited Taxpayers' 2003 and 2004 federal income tax returns. As a result of the audits, on February 17, 2009, Taxpayers' federal taxable income was reduced. On or about March 6, 2009, Taxpayers filed amended 2003 and 2004 BPT returns to reflect their federally-reduced taxable income, and seek refunds of their previously-paid BPT.

Following an audit, the City acknowledged Keystone's 2003 and 2004 BPT overpayments but, by August 3, 2009 letters, the Department denied the refunds because Keystone's petitions were not timely filed. By September 28, 2009 letters, the Department notified QCC that its refund requests were denied because QCC's petitions were untimely filed. Taxpayers appealed from the Department's denials to the Board. At its December 29, 2011 meeting, the Board agreed that Taxpayers had overpaid their 2003 and 2004 BPT, and that they were not entitled to refunds, but held that they were entitled to credits "to the extent the overpayment identified on the amended returns resulted from [their] estimated payments." Reproduced Record (R.R.) at 13a. The Board issued its amended decisions on January 20, 2012 and, on April 11, 2012, issued its written opinion.

On January 27, 2012, the City appealed from the Board's amended decisions to the trial court. Taxpayers cross-appealed. The trial court consolidated the appeals. By December 27, 2012 opinion and order, the trial court affirmed the Board's amended decisions. On January 16, 2013, the City appealed from the trial court's order to this Court (No. 97 C.D. 2013).² On January 17, 2013, Taxpayers

² Our scope of review where, as here, the trial court took no additional evidence, is limited to determining whether constitutional rights were violated, an error of law was committed or whether the Board's

cross-appealed to this Court (No. 98 C.D. 2013). By February 22, 2013 order, this Court consolidated the appeals.³

Taxpayers argue that the trial court erred by rejecting their refund requests as untimely. We disagree. The Pennsylvania Supreme Court has made clear:

Like statutes, the primary objective of interpreting ordinances is to determine the intent of the legislative body that enacted the ordinance. *See* 1 Pa.C.S. § 1921.^{FN19} Where the words in an ordinance are free from all ambiguity, the letter of the ordinance may not be disregarded under the pretext of pursuing its spirit. *See [I]d.*; 1 Pa.C.S. § 1903 (words and phrases in a statute shall be construed in accordance with their common and accepted usage). Alternatively, when the words in an ordinance are not explicit, the legislative body’s intent may be ascertained by considering, among other things, the ordinance’s goal, the consequences of a particular interpretation of the ordinance, and interpretations of the ordinance by an administrative agency. *See* 1 Pa.C.S. § 1921. Furthermore, in determining the proper interpretation of an ordinance, courts and agencies shall also presume that the legislative body ‘[did] not intend a result that is absurd, impossible of execution or unreasonable.’ *See* 1 Pa.C.S. § 1922. . . .

FN19. When interpreting the meaning of municipal ordinances, we are guided by the principles of statutory construction.

Bailey v. Zoning Bd. of Adjustment of City of Phila., 569 Pa. 147, 163-64, 801 A.2d 492, 502 (2002). Moreover:

findings of fact are supported by substantial evidence. Section 754 of the Administrative Agency Law, 2 Pa.C.S. § 754.

Appeal of Phila. Fresh Food Terminal Corp., 945 A.2d 802, 804 n.1 (Pa. Cmwlth. 2008) (*Fresh Food Terminal Corp.*). “Because the issue in this case is a question of law, this Court’s scope of review is plenary.” *Turchi v. Phila. Bd. of License & Inspection Review*, 20 A.3d 586, 590 n.7 (Pa. Cmwlth. 2011).

³ The City is the designated appellant.

It is a fundamental principle of administrative law that an administrative agency's interpretation of the statute it is charged to administer is entitled to deference on appellate review absent fraud, bad faith, abuse of discretion, or clearly arbitrary action. Our Supreme Court has stated:

It is well settled that when the courts of this Commonwealth are faced with interpreting statutory language, they afford great deference to the interpretation rendered by the administrative agency overseeing the implementation of such legislation.

Turchi v. Phila. Bd. of License & Inspection Review, 20 A.3d 586, 591 (Pa. Cmwlth. 2011) (citation and quotation marks omitted). “The Pennsylvania Supreme Court . . . has applied this principle to local administrative agencies as well.” *Id.* at 593. Finally, this Court has held:

[A] refund of voluntarily paid taxes is a matter of legislative grace. Further, compliance with the time limitation set forth in a tax statute is an absolute condition to obtaining a refund . . . of the paid taxes, and the time limitation in the tax statute should be strictly enforced to prevent any uncertainty in the budgetary planning and fiscal affairs of the Commonwealth.

Phila. Gas Works v. Commonwealth, 741 A.2d 841, 846 (Pa. Cmwlth. 1999) (citation omitted).

Here, Section 19-1703(1)(d) of the Philadelphia Code states:

Every petition for refund of moneys collected by the Department on or after January 1, 1980, for or on behalf of the City . . . shall be filed with the Department within 3 years from the date of payment to the City . . . or the due date, whichever is later.

City Br. Ex D. at 546. Section 205 of the BPT Regulations provides:

Any taxpayer who has elected to file a [BPT] return on the basis of net income and/or net operating losses as returned to and ascertained by the [f]ederal [g]overnment, and who subsequently . . . experiences a correction in the amount of net income (or loss) as returned to the [f]ederal

[g]overnment, **shall, within 75 days after filing the amended return or corrected net income or losses by the [IRS] . . . file an amended [BPT] return** with the Revenue Commissioner, reporting the corrected net income (or loss), and shall remit any additional tax due.

City Br. Ex. E at 17 (emphasis added).

The Board asked the parties to brief the issue of whether Section 205 of the BPT Regulations creates a new “due date.” The Board considered the parties’ August 17, 2011 joint response in which they stated: the BPT returns and payments are due April 15th of each year following the year in which the taxpayer did business in the City; even if an extension is obtained to file a federal tax return and the City extends the time to file the BPT return, there is no extension to pay the tax; Taxpayers timely paid their BPT taxes, and timely filed their returns by the extended due date. The Board concluded that, in applying the parties’ standards, “refunds could not be granted because the filing of the BPT returns on their ‘actual due date’ and concurrent remittance of the tax payments placed these refund requests outside the 3[-]year statute of limitations and therefore they were barred by The Philadelphia Code Chapter 19-1703(1)(d).” City Br. Ex. C. at 4.

The trial court likewise deemed Taxpayers’ refund petitions untimely based on Section 19-1703(1)(d) of the Philadelphia Code. It further stated that Section 205 of the BPT Regulations, when read *in pari materia* with Section 19-1703(1)(d) of the Philadelphia Code

does not create a new and independent ‘due date’ for the [3-]year statute of limitations. [BPT Regulation Section] 205 merely creates a new due date for the filing of a return. When looking at the plain, unambiguous language of [Section] 19-1703(1)(d), it provides for a [3-]year statute of limitations from the payment due date, not from [the] deadline date for the filing of a return. . . . This court need not look beyond the words of [Section] 19-1703(1)(d) to conclude that the Taxpayers’ refund request was untimely.

....

Here[,] Taxpayers had no payment due on March 5, 2009, and were at most only required to file a return on that date. Thus[,] there is no new ‘payment due’ date for the purposes of [Section] 19-1703(1)(d). Therefore, the Taxpayers’ ‘due date’ argument must fail.

City Br. Ex. A at 6-7.

The plain language of Section 19-1703(1)(d) of the Philadelphia Code requires refund petitions to be filed within 3 years from the date taxpayers made their tax payments, or within 3 years of when those tax payments were due, whichever is later. Despite having sought extensions for filing their returns, QCC timely made its estimated 2003 BPT payment on April 13, 2004. *See* R.R. at 22a. Keystone timely made its estimated 2003 BPT payment on April 7, 2004. *See* R.R. at 216a. QCC timely made its estimated 2004 BPT payment on April 12, 2005. *See* R.R. at 134a-135a. Keystone timely made its estimated 2004 BPT payment on April 1, 2004. *See* R.R. at 306a. The “later” of the “payment date” and the “due dates” for such payments was April 15, 2004 and April 15, 2005, respectively. Thus, in order for Taxpayers to be eligible for refunds of their estimated 2003 BPT tax year payments under Section 19-1703(1)(d) of the Philadelphia Code, they were required to file a refund petition on or before April 15, 2007. Similarly, in order for Taxpayers to be eligible for refunds of their estimated 2004 BPT tax year payments pursuant to Section 19-1703(1)(d) of the Philadelphia Code, they were required to file a refund petition on or before April 15, 2008. It is undisputed that Taxpayers filed their refund requests in March 2009, well after those deadlines.⁴ Nothing in Section 205 of the

⁴ In Taxpayers’ denial letters, the Department stated: “According to the statute of limitations, a refund petition must be filed within three years of either the date of the payment **or the due date of the tax return**, whichever is later.” R.R. at 86a, 156a, 241a, 333a (emphasis added). The Department’s interpretation was in error. Because Section 19-1703(1)(d) of the Philadelphia Code never references “tax returns,” the phrase “the due date” cannot reasonably be interpreted to mean the “due date of a tax return.” Since “date of payment” refers to the date on

BPT Regulations expressly or by implication modifies Section 19-1703(1)(d) of the Philadelphia Code.

Although not addressed by the Board in light of its credit award, the trial court held that Taxpayers' equity argument must fail because Section 19-1703(1)(d) of the Philadelphia Code is a statute of repose which precludes equitable extensions. The trial court's decision comports with this Court's holding in *Philadelphia Gas Works* that:

neither the Board nor this Court has power to alter the explicit time limitation set forth in the [refund limitation statute] based on equitable principles. Hence, the . . . time limitation under . . . [a refund limitation statute] is mandatory, rather than directory, and [taxpayer] was required to comply with the time limitation to be eligible for a refund . . . of the prepaid sales taxes.

Id. at 847 (citation omitted).

Similarly, in *Appeal of Phila. Fresh Food Terminal Corp.*, 945 A.2d 802 (Pa. Cmwlth. 2008) (*Fresh Food Terminal Corp.*), the taxpayer paid its 2000 and 2001 use and occupancy taxes. In December 2004, the Board reduced the taxpayer's liability for the 2000 and 2001 tax years. The taxpayer filed a refund petition pursuant to Section 19-1703(1)(d) of the Philadelphia Code. The Board concluded that the December 2004 reduction created a new tax due date from which the 3-year period would run. On appeal, the trial court reversed the Board's determination concluding that the use and occupancy tax payment provision established the tax due date, and "that the tax refund request provision at [S]ection 19-1703(1)(d) of the

which the monies sought to be refunded were previously paid to the City, and no other language qualifies "or the due date," the latter must also refer to the due date of monies previously paid to the City and now sought to be refunded. However, the Department's error does not change our analysis since even using dates the tax returns were due – September 15, 2004 and September 15, 2005, making the 3-year deadline September 15, 2007 and September 15, 2008 – Taxpayers' March 2009 filings would still have been untimely.

Philadelphia Code does not allow for any deviation from the due date; thus, the Tax Board's December 17, 2004[] decision did not create a new due date." *Fresh Food Terminal Corp.*, 945 A.2d at 804. This Court affirmed the trial court's order, stating:

[S]ection 19-1703(1)(d) of the Philadelphia Code establishes a definitive amount of time in which one has to file a refund request. Moreover, the three-year period begins to run after a definitively established event, the later of the payment date or the due date. Thus, section 19-1703(1)(d) is a statute of repose. Consequently, because Taxpayer paid his taxes by the due date, Taxpayer's right to a refund for taxes paid in 2000 and 2001 was extinguished by the end of 2004.^{FN2}

FN2. We reject Taxpayer's argument that the December 17, 2004[] decision of the Tax Board created a new due date. The Tax Board's decision only created new market and assessed values for the property. Moreover, Taxpayer owed no additional taxes on December 17, 2004; thus, December 17, 2004, could not be a tax due date. Finally, we are not persuaded by Taxpayer's argument that the City's refusal to issue a refund has the effect of reversing the Tax Board's un-appealed decision. The City was simply applying the three-year limitation on the filing of refund requests.

Fresh Food Terminal Corp., 945 A.2d at 805. Accordingly, neither the Board nor the trial court could deviate from the refund petition due date set by Section 19-1703(1)(d) of the Philadelphia Code, regardless of the IRS' adjustments to Taxpayers' federal taxable income reductions. Because the Board properly rejected Taxpayers' refund requests as untimely, the trial court did not err by affirming the Board's orders.

The City argues that the trial court erred by upholding the Board's *sua sponte* credit award when Taxpayers' refund requests were untimely. We disagree. Section 19-2610 of the Philadelphia Code requires that the Department promulgate

regulations “to provide for estimated tax payments to be paid concurrently with the filing of any return, and for credits to be granted on any overpayment of estimated tax payment.” City Br. Ex. D at 590. Section 202 of the BPT Regulations states, in pertinent part, that “[a]ny overpayment of the current year tax shall be applied first to the payment of an estimated tax for the tax year that follows or to other taxes due.” City Br. Ex. E at 2.

At its December 29, 2011 meeting, the Board, *sua sponte*, stated that it “shall issue a credit on [Taxpayers’] BPT account . . . to the extent the overpayment identified on the amended returns resulted from the [Taxpayers’] estimated payments.” R.R. at 10a. The Board repeated its credit award in its amended decisions. *See* City Br. Ex. B at 1-4, Ex. C at 4. In its opinion, the Board held: “The relevant import in the instant matter is that taxpayers shall receive credits when their estimated payments contribute to overpayments. Here, the Department did not issue credits to [Taxpayers] for the overpayments as the result of the [Taxpayers’] estimated 2003 and 2004 tax payments.” City Br. Ex. C at 5.

The trial court determined that “[t]he [Board] correctly held that the Taxpayers were entitled to credit because, unlike refunds, there is no deadline . . . and the [Board] can award BPT credits to the Taxpayers.” City Br. Ex. A at 8-9. The trial court reasoned:

There is no mention in [Section] 19-1703(1)(d) of a filing return ‘due date’ to determine the time limitations for a refund request[]; and there is also no mention in BPT [Regulations Section] 202 or [Section] 19-1703(1)(d) of any time limitation for the award of BPT overpayment credits. The City’s argument that BPT [Regulations Section] 202 does not allow taxpayers to carry forward credits form [sic] past tax years must fail because the clear language of the regulation says otherwise. Further, the City’s argument that there should be a deadline for credits because there is a deadline for refunds must also fail. No where [sic] in [Section] 19-1703(1)(d) is there any mention [of] credits,

only refunds. Indeed, if City Council intended to create a deadline for credits or wished to link credits to the refund deadline in [Section] 19-1703(1)(d), it could have done so. When looking at the plain, unambiguous language of [Section] 19-1703(1)(d), it clearly expresses entitlement to a credit for any overpayment without providing any statute of limitations.

Importantly, it makes sense to have a firm deadline for refunds but possibly not for credits. The reason for clear refund deadlines [is] to allow the City to know the extent of its liability for tax repayments so it can budget accordingly. Credits are clearly different from refunds because they can be budgeted going forward as opposed to retroactively.

Finally, the City's argument that the [Board's] grant of credit should be reversed because the Taxpayers never sought a credit must also fail. A decision of the Department to grant a refund in whole or in part becomes final only after it has been reviewed, approved, and/or modified by the [Board]; [Section] 19-1703(4). Here, although the Taxpayers only sought a refund in their [p]etition[s], the [Board] correctly determined that a refund was untimely but otherwise appropriate, and modified the request accordingly, taking into account the applicable portions of the [Philadelphia C]ode and appropriate equitable considerations.

City Br. Ex. A at 9-10.

According to Taxpayers, the City's Home Rule Charter⁵ expressly authorizes the Board to perform those duties delegated by City Council, one of which is to hear taxpayer appeals affecting their tax liability, since the Board can address these cases quickly and with the least expense to the taxpayer and the City. *See* Taxpayers' Br. at 32-33. The City has not challenged the Board's authority to issue credits, but rather its authority to issue them *sua sponte* after Section 19-1703(1)(d) of the Philadelphia Code's refund deadline had not been met. However, the City has not

⁵ A copy of the City's Home Rule Charter was not made part of this record.

pointed to any provision of either the Philadelphia Code or the BPT Regulations that prohibits the Board from awarding credits in this manner.

The City's argument that this Court, in *Philadelphia Gas Works*, held that the terms "refund" and "credit" are interchangeable and, therefore, Section 19-1703(1)(d) of the Philadelphia Code deadline for refund requests likewise imposes a deadline for credit requests is without merit. As Taxpayers point out, the applicable underlying statute in *Philadelphia Gas Works* expressly stated that the taxpayer shall be entitled to a credit or refund of such tax, whereas, the underlying statutes in this case make distinct references in Section 19-1703(1)(d) of the Philadelphia Code only to refunds, and in Section 2610 of the Philadelphia Code only to credits.⁶ Thus, this

⁶ Taxpayers also note that Section 19-1703(1)(d) of the Philadelphia Code was enacted in 1979 (effective 1980). The mandatory estimated payments required by Section 19-2610 of the Philadelphia Code and Section 202 of the BPT Regulations were not promulgated until 2002 (effective 2003). Thus, Section 19-1703(1)(d) of the Philadelphia Code's limitations period could not have contemplated estimated BPT payments and credits, and City Council did not add a limitations period for credits when it made the 2002 amendments.

The Dissent maintains that "there is no functional difference between a refund and a credit," so that the three-year limitation for refunds applies equally to credits. Dissenting Op, at 2. Section 19-1703(1)(d) expressly mentions only refunds. "Refund" and "credit" are not generally defined in the Philadelphia Code or the Commonwealth's tax laws. "[U]nder the principles of the Statutory Construction Act, 1 Pa.C.S. § 1903(a), the language of local ordinances, like that of state statutes, should be given its plain meaning." *Lawrence G. Spielvogel, Inc. v. Twp. of Cheltenham*, 601 A.2d 1310, 1317 (Pa. Cmwlth. 1992). A refund is defined as "the return of money to a person who overpaid[.]" *Black's Law Dictionary* 1394 (9th ed. 2004). A credit is defined as "[t]he availability of funds[.]" *Id.* at 424. The plain meaning of these terms differ. Had City Council intended to place a limitation on credits in the Philadelphia Code, it could have done so.

The Dissent's interpretation re-writes the Philadelphia Code, which this Court does not have the authority to do. "When the words of a statute are clear, there is no need to look beyond the plain meaning of a statute. If a statute is deemed ambiguous, however, resort to principles of statutory construction is appropriate. 1 Pa.C.S. § 1921(c)[.]" *Colville v. Allegheny Cnty. Retirement Bd.*, 592 Pa. 433, 444, 926 A.2d 424, 431 (2007) (citations omitted). Thus, the need to ascertain legislative intent only applies when there is an ambiguity. Otherwise, we must use the plain meaning of the words contained in the statute. Here, there is no need to ascertain City Council's intent. The word "credit" is not present. Moreover,

there is no judicial authority to rewrite laws for the purpose of improving them or to restructure them in accordance with what might

Court's reference in *Philadelphia Gas Works* to the interchangeability of the terms "refund" and "credit" is inapplicable here.

In addition, the Pennsylvania Supreme Court has held:

It would be unfair to allow the [taxing authority] to assess a deficiency for underpaid transactions but not allow the taxpayer to point to overpaid transactions . . . to reduce the deficiency. The construction that the [taxing authority] advocates leads to a potential windfall for the government, at the expense of the individual taxpayer, a result that we cannot approve.

McNeil-PPC, Inc. v. Commonwealth, 575 Pa. 50, 63-64, 834 A.2d 515, 522-23 (2003). Finally,

provisions of a statute dealing with the imposition of taxes shall be strictly construed. 1 Pa.C.S. § 1928. [A] taxing statute must be construed most strongly and strictly against the government, and if there is a reasonable doubt as to its construction or application to a particular case, the doubt must be resolved in favor of the taxpayer.

Skepton v. Borough of Wilson, 562 Pa. 344, 350, 755 A.2d 1267, 1270 (2000) (quotation marks omitted). Thus, even if this Court were to discern that there is some ambiguity in Sections 19-1703(1)(d) and 19-2610 of the Philadelphia Code, and Section 202 of the BPT Regulations relative to credits, statutory construction principles require the trial court and this Court to construe them in Taxpayers' favor. Because there was nothing prohibiting the Board from *sua sponte* awarding

have been the hopes of nonlegislative advocates. The important safeguard against judicial legislation is our statutory interpretation principle that: 'When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.' 1 Pa.C.S. § 1921(b).

Allright Auto Parks, Inc. v. Zoning Bd. of Adjustment of the City of Phila., 529 A.2d 546, 549 (Pa. Cmwlth. 1987). "[J]udicial rewriting by the court-however well intended-[is] not legally warranted." *Id.* at 552.

Taxpayers credits when their refund requests were untimely, the trial court did not err by affirming the Board's amended decisions.

Based upon the foregoing, the trial court's order is affirmed.

ANNE E. COVEY, Judge

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ORDER

AND NOW, this 18th day of November, 2013, the Philadelphia County Common Pleas Court's December 27, 2012 order is affirmed.

ANNE E. COVEY, Judge

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BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

DISSENTING OPINION BY
PRESIDENT JUDGE PELLEGRINI FILED: November 18, 2013

I agree with the majority’s conclusion that Taxpayers’ refund requests were untimely because they were not filed within three years of the payment dates or payment due dates as required by Section 19-1703(1)(d) of the Philadelphia Code

(Code). The majority finds that the three-year limitation for “refunds” does not apply to credits because credits are not the same as refunds. It points to Section 19-2610 of the Code requiring that the Department promulgate regulations¹ “to provide for estimated tax payments to be paid concurrently with the filing of any return, and for credits to be granted on *any* overpayment of estimated tax payment.” (Emphasis added). Because there is no express time limitation for credits, under the majority view, essentially, a party can seek a credit against current tax liabilities “forever.” Because there is no functional difference between a refund and a credit – in both, someone has more money or less² - unlike the majority, I would hold that the three-

¹ The regulation promulgated pursuant to Section 19-2610 provides, in relevant part, that “[a]ny overpayment of the current year tax shall be applied first to the payment of an estimated tax for the tax year that follows or to other taxes due.” Section 202 of the BPT Regulations. The majority also notes that Section 19-1703(1)(d) of the Code was enacted in 1979, while the mandatory estimated payment requirements of Section 19-2610 of the Code and Section 202 of the BPT Regulations were not promulgated until 2002. Therefore, the majority states, the three-year limitation of Section 19-1703(1)(d) could not have contemplated estimated BPT payments and credits. However, Section 19-1703(1)(d) also predated the 1984 enactment of the BPT itself, yet there is no doubt that its three-year statute of limitations applies to BPT refund claims.

² Implicit in the majority’s position is Taxpayer’s argument that there is a difference between a credit and a refund because a credit can be subject to budgetary planning and a refund cannot is simply incorrect. Refunds to be paid are a line item in every budget based on averaging principles because a timely refund for a given year’s taxes may not be resolved for many years in the future. Because there is a statute of limitations and the number of claims in past years, the taxing body can measure much more accurately what it needs to budget for refunds. However, because, under the majority’s view, there is no statute of limitations, the taxing body has no idea the number of people who are going to seek a credit, which makes budgeting for the amount of credit much more difficult. To accept that view that there is a difference between the two because it is easier to budget for a credit than a refund is like saying it is easier for an actuary to price an occurrence policy, with no set time limit for when an insurance company is obligated to cover a claim, than a “claims made” policy that only covers claims made in certain years.

Moreover, the majority’s argument that the dissent’s interpretation rewrites the Philadelphia Code is simply wrong because it effectuates the intent of the legislative body. If the net effect of a credit is to give a refund for back years’ taxes to pay for future years’ taxes, it is a refund by another **(Footnote continued on next page...)**

year limitation for refund requests include credit requests as well and would reverse the trial court's order. Accordingly, I respectfully dissent.

DAN PELLEGRINI, President Judge

(continued...)

name. Simply, a refund or a tax credit is to compensate for an overpayment. To get an overpayment back, there is a requirement that it has to be timely made which the majority seems to write out of the Philadelphia Code.

Moreover, there is a rule of statutory construction that in ascertaining legislative intent in the enactment of a statute, it should be presumed that the legislative body did not intend an absurd result. *See* 1 Pa. C.S. §1922. Under the majority's view, there is no statute of limitations for credits; one can be sought forever. That essentially makes the three year statute of limitations for refunds meaningless because you can forever get the refund back in the form of a credit. That makes the majority's interpretation absurd.

At the end of the day, whether a credit or refund, notwithstanding all the metaphysical distinctions that the majority attempts to make between the two, one thing is certain – there is less money to pay policemen or teachers.