OHIO BOARD OF TAX APPEALS

TAMMY J. AUL JONES, (et. al.), Appellant(s), vs. CITY OF MASSILLON, (et. al.), Appellee(s).	)	CASE NO(S). 2018-2137 (MUNICIPAL INCOME TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TAMMY J. AUL JONES
Represented by:
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For the Appellee(s) - CITY OF MASSILLON
Represented by:
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Entered Monday, March 29, 2021

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant Tammy J. Aul Jones appeals a decision issued by the Massillon City Local Board of Tax Review, i.e., the Municipal Board of Appeal ("MBOA"). See R.C. 718.11. The MBOA affirmed an assessment claiming an underpayment of appellant's Massillon Municipal Income Tax for tax year 2017. This matter is now considered upon the notice of appeal, stipulations of fact, the record certified by the MBOA, and written argument submitted by the parties and *amicus curiae*.

The facts of this case are not in dispute. During the entirety of 2017, appellant was a resident of the city of Louisville, Ohio, employed by the United States Postal Service ("USPS"). Appellant reported to work at the USPS office located within the city of Massillon each day,

perform some work at that office, and then drive a postal vehicle that was loaded at the Massillon office along a designated route to deliver those letters and packages to addresses outside of the Massillon boundaries. The parties agree that during 2017, 40% of her time working for the USPS was performed within Massillon, while 60% of her time was performed outside of Massillon. Due to a federal exemption, the USPS was not required to withhold any of appellant's income. Appellant filed a municipal income tax return with Massillon on which she claimed that only 40% of her wages from the USPS were taxable to Massillon. In July 2018, Massillon notified appellant that her return was incorrectly prepared and filed, further indicating that penalties and interest applied for underpayment of required estimated tax payments. Appellant objected to this initial review of her return, and Massillon issued an assessment that included instructions regarding the appellate process. Ultimately, the MBOA affirmed the assessment, and appellant filed the present appeal.

In an appeal from a decision of the MBOA under R.C. 5717.011, this Board has the authority to conduct de novo review of the facts and law. *MacDonald v. Shaker Hts. Bd. of Income Tax Rev.*, 144 Ohio St.3d 105, 2015-Ohio-3290, ¶23. "The burden of proof is on the appellant to establish a right to the relief requested. Cf. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121." *Marion v. Marion Bd. of Rev.* (Aug. 10, 2007), BTA No. 2005-T-1464, unreported, at 3.

In the present appeal, there is no dispute about the facts of the case, but rather the parties disagree about the proper interpretation of the statute. In its determination affirming the assessment, the Tax Administrator claimed that Massillon was entitled to the entirety of appellant's USPS wages because the Massillon office was her "principal place of work" under R.C. 718.011(A)(7). On appeal, appellant concedes that the Massillon Post Office was her

principal place of work but maintains that as a non-resident, Massillon was not permitted to tax her on the 60% of her time that was spent outside the City. Appellant asserts that R.C. 718.011 does not apply to this case because it references the duties and safeguards of an employer related to withholding, not the tax assessed against a taxpayer. Massillon claims that although the statute speaks in terms of the employer's withholding requirement, it is nevertheless relevant because the employee is not relieved from liability for a tax simply because it was not withheld by an employer. Massillon further argues that a distinction between withholding and withholding-exempt employers would result in unequal treatment among employee taxpayers merely on the basis of who employs them. Massillon maintains that appellant is liable for income tax on all compensation because the Massillon Post Office was her principal place of work.

Municipal corporations are authorized to "levy a tax on income and a withholding tax if such taxes are levied in accordance with the provisions and limitations specified in this chapter." R.C. 718.04. R.C. 718.01(B)(2), "income" is defined as:

> In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

In other words, as it relates to the present appeal, Massillon is authorized to impose a tax on the income "earned or received" by appellant, a nonresident, "for work done, services performed or rendered, or activities conducted" within Massillon. Massillon urges this Board to look at R.C.

5718.011 (regarding the proper allocation of withholding tax between multiple municipal corporations) and incorporate the withholding rules related to an employee's "principal place of business" into the calculation of a nonresident employee's taxable income. Massillon argues that pursuant to R.C. 5718.011(B)(2), because appellant spent more time performing services on behalf of the USPS in Massillon than any other municipality, the time spent delivering letters and packages outside of Massillon should be attributed to her principal place of business, i.e., the Massillon Post Office. We find that to do so would be improper and, this case, would expand the definition of the income taxable by Massillon beyond that permitted by the General Assembly.

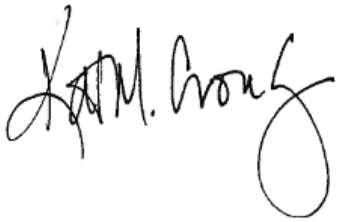
R.C. 718.04 allows the municipality to levy an income tax and a withholding tax, and while the two are related, they are distinct, and each has its own set of requirements. For instance, the statute relied on by Massillon, commonly referred to as the "occasional entrant rule," provides a safe harbor for employers from the withholding requirement when the employee performs work in more than one location and spends twenty or fewer days in the taxing municipality. These rules do not define the employee's income tax liability and only reference the employer's duty (or lack thereof) to withhold. Massillon's arguments conflate an employer's withholding rules with its authority to tax a nonresident individual. Just as an employer's lack of withholding does not alleviate the employee's income tax liability, neither does an employer's withholding requirement expand the tax due from an employee. The statute expressly limits Massillon's authority to tax only that income earned for work done "in the municipal corporation." Here, the parties have agreed that appellant spends only 40% of her time performing work in Massillon. Thus, Massillon's interpretation would expand the definition of income to work performed outside the municipality, which we find is contrary to

the definition of income found in R.C. 718.01(B)(2) and would be improper. Therefore, we find that Massillon erred by assessing a tax on the 60% of appellant's work performed outside of the municipality.

Accordingly, the decision of the MBOA is hereby reversed, and we remand the matter with instructions to cancel the assessment.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Harbarger		
Ms. Clements		
Mr. Caswell		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



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Kathleen M. Crowley, Board Secretary