BEFORE THE TAX APPEAL BOARD

OF THE STATE OF DELAWARE

PROFESSIONAL STAFF LEASING CORP., Petitioner, v. DIRECTOR OF REVENUE, Respondent.	)	Docket No. 1371
MELMER CORPORATION , Petitioner, v. DIRECTOR OF REVENUE, Respondent.	)	Docket No. 1385

Before: Regina Dudziec, Cynthia Hughes, Todd C. Schiltz, Esq., and Joan Winters, members of the Tax Appeal Board. Opinion by Todd C. Schiltz, Esq.

DECISION AND ORDER

The issue before the Board in both of these cases is whether certain sums petitioners receive from their clients are taxable as gross receipts under 30 Del. C. § 2301. For the reasons set forth below, the Board concludes that the amounts at issue are part of petitioners' gross receipts and, thus, subject to taxation by the State of Delaware.

FACTS

Petitioners Professional Staff Leasing Corporation and Melmar Corporation (collectively, "Petitioners") are professional employer organizations which provide their clients with payroll services, benefits administration and human resources advice/consulting. Petitioners do not supply clients with temporary or permanent employees; however, through a contractual relationship with their clients, Petitioners co-employ the employees that already work for their clients.

At the end of each pay period, Petitioners' clients provide Petitioners with the number of hours worked by each worksite employee and their applicable pay rate. Petitioners then computes the wages due, the applicable federal and state taxes, workers' compensation premiums and employee benefit deductions. Petitioners produce payroll checks based on this information and then invoices their clients for an amount, which includes the employee's gross wages, federal and state taxes, workers' compensation premiums, employee benefit deductions and Petitioners' administration fee.

Petitioners' clients pay the invoice and out of such payment Petitioners remit payments to the employees, pays the applicable federal and state taxes, pays worker compensation premiums and remits employee benefit deductions and employer benefit contribution where appropriate. The funds remaining after such payments represent the amount earned by Petitioners for the services rendered to the client.

The State contends that all funds Petitioners receive from their clients are "gross receipts" as that term is defined by 30 Del. C. § 2301. In April 2002, the State issued a gross receipts tax assessment against Professional Staff Leasing Corp. in the amount of $26,817.42. Petitioners disputed the assessment, arguing that they should be taxed only the administrative portion of its receipts because all other sums simply are passed through to its clients' employees. The issue now comes before the Board for resolution.

ANALYSIS

The definition of gross receipts applicable to Petitioners is set forth in Section 2301(e), which provides that "'Gross Receipts' is defined as total consideration for services rendered, goods sold or other income producing transactions within this State, including fees and commissions." We conclude that the compensation Petitioners receive from their clients, including the funds which Petitioners receive in the form of employee gross wages, federal and state taxes, workers' compensation premiums, and employee benefit deductions, meet this definition.

The monies Petitioners receive are part of the total consideration Petitioners receive from their clients for the services they perform and, hence, are part of Petitioners' gross receipts. See Director of Revenue v. Gove, Del. Super., C.A. No. 84A-SE-25, Balick, J. (May 22, 1985); Atlantic Richfield Co. v. Director of Revenue, 346 A.2d 184 (Del. Super. 1975). The fact that Petitioners are contractually bound to then distribute a substantial portion of these receipts back out in the form of wages, taxes, insurance and benefits does not change this fact or our analysis. Indeed, if Petitioners argument were accepted, Petitioners essentially would be allowed to reduce their gross receipts by taking a deduction for wages, taxes, insurance and benefits paid out. Delaware's statutory scheme expressly precludes such deductions. 30 Del. C. § 2120.

For the foregoing reason Petitioners' petition is denied and the assessment by the State is upheld.

Date: 8/13/04

Paul C. Eltz

Regina C. Dudgeon

Jon M. Winter