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TAX APPEAL BOARD OF THE STATE OF DELAWARE

GEORGE E. and FLORENCE G. LEWIS,)	
)	
Petitioners,)	
)	
v.)	Docket No. 809
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

Before: Joseph S. Yucht, Esq., Chairman; James C. Eberly, Sr., Esq., Vice-Chairman; Cyric W. Cain, Jr., Nettie C. Reilly, Harry B. Roberts, Jr., Members

George E. Lewis, pro se

Joseph Patrick Hurley, Jr., Esq., Deputy Attorney General for Respondent.

DECISION AND ORDER

Cyric W. Cain, Jr., Member: This case involves Petitioners' denied claim for refund in the amount of \$221 and concerns whether compensation received by Petitioner in lieu of eight weeks accrued but unused vacation constituted taxable income.

The facts which have been stipulated heretofore by both parties are summarized as follows:

1. Petitioner began employment with the DuPont Company in 1941, while a resident of Delaware and was employed at a company facility located in Delaware from 1941 until 1949.
2. In 1949, Petitioner moved to Pennsylvania continuing his company employment at a Pennsylvania facility.

3. In 1979, Petitioner was transferred from the Pennsylvania facility to one located in Delaware but remained a Pennsylvania resident.

4. At the time Petitioner was transferred he had earned and accumulated four weeks of unused vacation time pursuant to the DuPont Company Vacation Plan.

5. On November 30, 1982, Petitioner retired from the DuPont Company.

6. Between February, 1979 and the date of retirement, Petitioner, as a result of his employment at a DuPont facility located in Delaware, earned approximately twenty-four weeks of vacation allowance and actually took approximately twenty weeks of vacation.

7. Under the DuPont Company Vacation Plan, an employee becomes entitled to a lump sum payment, as a result of having earned and accumulated unused vacation time, upon retirement.

8. On November 30, 1982, Petitioner received a lump sum payment of \$10,758 upon retirement for eight weeks of accrued but unused vacation time.

9. In 1982, DuPont recorded on Petitioner's W-2 form that \$62,842 of wages were attributable to Delaware source income and accordingly withheld State income tax therefrom.

10. When Petitioner filed his Delaware Income Tax return for the year 1982, he reduced the W-2 income of \$62,842 by \$4,300 thereby causing a tax deficiency of \$221.

30 Del. Code, Sec. 1121 (Taxable Income) provides the taxable income of a nonresident individual shall be that part of his Federal Adjusted Gross income derived from sources within the State determined by reference to Sec. 1122 of this title...

Sec. 1122. Taxable Income derived from sources within this State. (b) (1) Compensation, other than pensions, as an employee in the conduct of the business of an employer...

Mention should be made as to how the eight weeks of accrued but unused vacation time was determined. The DuPont Company Vacation Plan states that vacation carryover days are placed in a "vacation carryover 'bank'" but does not mention a method of accounting specifically identifying these days. For this reason, the more traditional method of First-In, First-Out method (fifo) of inventory identification was used.

To summarize, the Petitioner had accumulated four weeks of carryover vacation days while working in Pennsylvania. He subsequently became entitled to twenty-four weeks vacation, of which approximately twenty of these weeks were used by the Petitioner for vacation.

Under the fifo method, the vacation days already in the bank (the four weeks the Petitioner accumulated while working in Pennsylvania) must be used first. Thus, the four weeks of carryover vacation earned in Pennsylvania should have been applied to the twenty weeks of vacation used. The remaining sixteen weeks of used vacation time should have been attributable to vacation

time earned as a result of the Petitioner's employment in Delaware. Therefore, the remaining eight weeks of accrued but unused vacation should have all been earned while the Petitioner worked in Delaware and any compensation the Petitioner received as a vacation allowance for those eight weeks should be attributable to Delaware source and subject to Delaware Income Tax under 30 Del. Code.

For the foregoing interpretation, we hereby affirm the determination of the Respondent.

IT IS SO ORDERED:

Eric W. Gair
Frank B. Kubit
Joseph S. Yucht
Arthur C. Reilly

DATE: January 25, 1985

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time earned as a result of the Petitioner's employment in Delaware. Therefore, the remaining eight weeks of accrued but unused vacation should have all been earned while the Petitioner worked in Delaware and any compensation the Petitioner received as a vacation allowance for those eight weeks should be attributable to Delaware source and subject to Delaware Income Tax under 30 Del. Code.

For the foregoing interpretation, we hereby affirm the determination of the Respondent.

IT IS SO ORDERED:

Eugene W. Gair
Thomas B. Kahlert
Joseph S. Yucht
Nettie C. Reilly

DATE: January 25, 1985

SYNOPSIS

DOCKET NO. 809

TAX SEGMENT: PERSONAL INCOME TAX

ISSUE: Whether or not compensation received by a nonresident taxpayer for accrued but unused vacation constitutes taxable income.

TAB DECISION: The Tax Appeal Board held that since the DuPont Vacation Plan does not mention the method of accounting specifically identifying vacation carryover "bank" the traditional method of First-in, First-out (fifo) be used. Therefore, by reference to 30 Del. C., §1122 (b) (1) the compensation received by the Petitioner for vacation allowance is attributable to Delaware source and subject to Delaware Income Tax.

DECISION: For Respondent

DECISION DATE: January 25, 1985