

10142 (a)

TAX APPEAL BOARD OF THE STATE OF DELAWARE

GEORGE WATTS,
Petitioner,
v.
DIRECTOR OF REVENUE,
Respondent,

Docket No. 828

ORDER

The Tax Appeal Board having heard and considered the evidence makes the following findings of fact:

1. The sum of \$7,923.33, reported on a Form 1099, issued by Security Storage Company to Petitioner for the year 1980, is income to Petitioner for that year.

2. The sum of \$20,599.40, reported on a Form 1099, issued by Security Storage Company to Petitioner for the year 1980, is not income to Petitioner for that year.

3. The motor vehicle in question which was used by Petitioner in the performance of his contract with Security Storage Company was owned by Security Storage Company and not Petitioner.

4. Any losses incurred in the operation and/or financing of the motor vehicle between Petitioner and Security Storage Company which resulted in Security Storage Company issuing the Form 1099 in the amount of \$20,599.40 will be a loss incurred by Security Storage Company and not Petitioner.

SO ORDERED this 18th day of April, 1986.

Joseph S. York
Tax Appeal Board

828

SUPERIOR COURT
OF THE
STATE OF DELAWARE

JUDGE BERNARD BALICK
(302) 571-2367

December 28, 1987

COURT HOUSE
WILMINGTON, DE. 19801

Joseph Patrick Hurley, Esquire
Deputy Attorney General
for Division of Revenue
820 N. French Street
Wilmington, DE 19801

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TAX APPEAL BOARD

Dear Mr. Hurley:

Re: Director of Revenue v. George Watts
Civil Action No. 86A-MY-2
Assigned: July 13, 1987

OPINION AND ORDER

The Director of Revenue has filed this appeal from a decision of the Tax Appeal Board. Since Mr. Watts has not filed a brief, the appeal must be decided on the record and the Director's opening brief.

Mr. Watts drove a truck for Security Storage Company. A written "owner-operator contract" governed relations between Watts and Security. Security had advanced sums to maintain, repair and pay off the loan on the truck used by Watts. Watts was obligated to reimburse Security. When he failed to do so, Security wrote off the obligation as a bad debt. The Director then included the amount written off, \$20,599.40, in Watts' gross income for 1980. After the federal IRS ruled that the amount was not income, Watts sought a similar ruling from the State.

The amount in question is taxable as income if Watts was an independent contractor, as stated in the owner-operator contract, but it is not if Watts was really an employee of Security. The nature of the relationship is normally a question of fact, unless it is so clear that only one finding is possible. Restatement, Second, Agency § 220, comment c. The characterization of the relationship in the contract is one factor but it is not conclusive. Restatement, Second, Agency § 220, comment m.

I will not go into a detailed discussion of the relationship between the parties. Although it might have been more fully developed, I conclude the record is sufficient for review. Considering the amount at issue, on which the tax would be \$458, remanding the case for further findings is not practical. As a fact finder, I would be inclined to agree with the Director that Watts was an independent contractor. But my function on appeal

Joseph Patrick Hurley, Esq.
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December 28, 1987

is to determine whether there is substantial evidence in the record supporting the Board's decision. 29 Del. C. § 10142 (d).

I conclude that there are sufficient factors indicating that Watts was Security's employee to justify affirming the Board's decision. First of all, the fact that Security paid substantial sums to maintain, repair, and pay off the loan on the truck suggests that Security supplied the instrumentality used by Watts in the performance of his work, notwithstanding that the contract says that Watts owned the truck. Moreover, the contract itself states that the truck is titled and licensed in the name of Security. Finally, the contract requires Watts to personally perform his contractual obligations to the optimum possible extent with a limited right to hire employees, subject to Security's approval. This suggests that Watts was not in fact an independent contractor. Restatement, Second, Agency § 220.

For these reasons, it is ORDERED that the decision of the Board is AFFIRMED.

Very truly yours,



BERNARD BALICK

BB:ipm

xc: Mr. George Watts
Louis P. Agostini, Jr., Esq.
✓ Tax Appeal Board
Superior Court Administrator
Law Libraries
Delaware Law School
Prothonotary

Mandate

#12

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THE SUPREME COURT OF THE STATE OF DELAWARE

TO The Superior Court of the State of Delaware
in and for New Castle County:

Greetings:

WHEREAS, in the case of:

DIRECTOR OF REVENUE

VS.

C.A. No. 86A-MY-2

GEORGE WATTS

a certain judgment or order was entered on the 28th day of December
19 87, to which reference is hereby made; and

WHEREAS, by appropriate proceedings the judgment or order was duly appealed to this Court,
and after consideration has been finally determined, as appears from the opinion or order of this Court filed on
April 12 19 88, a certified copy of which is attached hereto;

ON CONSIDERATION WHEREOF IT IS ORDERED AND ADJUDGED that the judgment or order be and it is
hereby affirmed.

SIGNED, SEALED AND
ATTESTED BY:


Clerk of the Supreme Court

Issued April 28, 19 88

Supreme Court No. 24, 1988

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DIR. OF REVENUE

WATTS

No. 24, 1988

C.A. No. 86A-MY-2

Superior Court

New Castle County

PROTHONOTARY
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MAY 2 1988

The following docket entry has been made in the above cause.

12. April 28. Record and mandate to clerk of court below.
Case Closed.

cc: The Honorable Bernard Balick
Joseph Patrick Hurley, Jr., Esquire
Louis P. Agostini, Jr., Esquire

Prothonotary

Received Above

By J. Carrickal

Date 5/2/88

Date: 4-28-88

Margaret L. Mayes
Clerk

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|----------------------|---|-----------------------------|
| DIRECTOR OF REVENUE, | § | |
| | § | |
| Appellant Below, | § | |
| Appellant, | § | No. 24, 1988 |
| | § | |
| v. | § | Court Below: Superior Court |
| | § | of the State of Delaware in |
| GEORGE WATTS, | § | and for New Castle County |
| | § | |
| Appellee Below, | § | C. A. No. 86A-MY-2 |
| Appellee. | § | |

Submitted: March 18, 1988
Decided: April 12, 1988

Before CHRISTIE, Chief Justice, HORSEY and MOORE, Justices.

O R D E R

This 12th day of April, 1988, upon consideration of appellant's opening brief and appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) On April 18, 1986, the Tax Appeal Board (the "Board") held a hearing and made factual findings favorable to the taxpayer, appellee. The Director of Revenue ("Director"), appellant, sought review in the Superior Court. The Superior Court, citing the limits of judicial review mandated by 29 Del. C. § 10142(d), affirmed the Board's decision. The Director now appeals to this Court, asserting that the Superior Court erred as a matter of law in holding that there was sufficient evidence to support the Board's

finding that the taxpayer was an employee rather than an independent contractor because the taxpayer took inconsistent positions as to the factual issue.

(2) The Director contends that this Court should reverse the Superior Court's affirmance of the decision of the Board. The review of a decision of an administrative agency by the Superior Court is governed by 29 Del. C. § 10142. Section 10142(d) provides, in pertinent part, that judicial review of an agency decision is "limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency." 29 Del. C. § 10142(d). Substantial evidence is defined as evidence from which the agency fairly and reasonably could have reached the conclusion it did. See National Cash Register v. Riner, Del. Super., 424 A.2d 669, 674-75 (1980). Substantial evidence is "more than a scintilla but less than a preponderance." Olney v. Cooch, Del. Supr., 425 A.2d 610, 614 (1981) (quoting Cross v. Califano, D.Fla., 475 F.Supp. 896, 898 (1979)). The Board, rather than the Superior Court, weighs the evidence presented and resolves the conflicting testimony and issues of credibility. See Mooney v. Benson Mgt. Co., Del. Super., 451 A.2d 839 (1982).

(3) Moreover, in reviewing an appeal to this Court of a holding of the Superior Court regarding a decision of an agency, it is recognized that the appeal to the Superior

Court from the agency's ruling is heard on the record. See 29 Del. C. § 10142(c). If the findings made by the Superior Court "are sufficiently supported by the record and are the product of an orderly and logical deductive process, in the exercise of judicial restraint we accept them, even though independently we might have reached opposite conclusions." Levitt v. Bouvier, Del. Supr., 287 A.2d 671, 673 (1972).

(4) Though on the basis of the record in the instant case this Court might disagree with the Board's interpretation of the evidence, we cannot say the Board's findings, or the Superior Court's affirmance thereof, are clearly wrong and are not the product of orderly deductive reasoning. The Board had the opportunity to observe the witnesses, hear the testimony and evaluate all the evidence in the context of the entire hearing. On the basis of the record before us, we decline to find the Board's rulings, and the Superior Court's affirmance thereof, clearly erroneous.

(5) The Superior Court did not err as a matter of law, as Director further contends, in finding that taxpayer was an employee rather than an independent owner although taxpayer took inconsistent positions as to this issue. Although the Director is correct in stating that a taxpayer claiming a refund has the burden of showing his entitlement to it, see 30 Del. C. § 1186, the taxpayer met his burden by presenting evidence to show that he was an employee rather

than an independent contractor. Further, the Board's holding, that his employer had erroneously reported taxpayer as receiving income that was not income, is supported by the record and not erroneous as a matter of law and must be accepted.

NOW, THEREFORE, IT IS ORDERED that the taxpayer's motion to affirm, pursuant to Rule 25(a), is GRANTED, and the judgment of the Superior Court be and it hereby is

AFFIRMED.

BY THE COURT:


Justice

State of Delaware }
Kent County } ss.

I, Margaret L. Naylor, Clerk of the Supreme Court of the State of Delaware, do hereby certify that the foregoing is a true and correct copy of Order dated April 12, 1988 in Director of Revenue v. Watts, No. 24, 1988,

as the same remains on file and of record in said Court.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Dover this 28th day of April, A.D. 1988.

Margaret L. Naylor
Clerk of the Supreme Court.