

Bond Case Briefs

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Hillenmeyer v. Cleveland Bd. of Rev.

Supreme Court of Ohio - April 30, 2015 - N.E.3d - 2015 -Ohio- 1623

Nonresident professional football player filed applications for refunds of income taxes paid to city. The Central Collection Agency (CCA), city's tax administration authority, upheld its imposition of tax using the games-played method of allocation, and player appealed. City's Board of Review upheld the CCA's position, and player appealed. The Board of Tax Appeals (BTA) affirmed, and player appealed.

The Supreme Court of Ohio held that:

- Statutory occasional-entrants rule did not violate player's equal protection rights;
- City's application of its games-played method of allocating income violated due-process rights of player; and
- Duty-days method comported with due process and ensured that the tax collected was not disproportionate to the income received for work in city.

Nonresident professional football player's election of appellate avenues, namely appealing to Board of Tax Appeals (BTA), rather than the common pleas court, did not waive his constitutional claim that city's allocation method known as "games-played," under which the taxable portion of professional athlete's income was based on the number of games the athlete played in city in relation to the total number of games played that year, violated due process. Statute, governing appeal from final determination of local board of tax review, set forth appellant's right to choose the forum and imposed no restrictions on its doing so.

Nonresident professional football player did not ignore statutory grounds for relief in order to present a constitutional argument, namely that city's allocation method known as "games-played," under which the taxable portion of professional athlete's income was based on number of games the athlete played in city in relation to total number of games played that year, violated due process. Player argued that Central Collection Agency's regulation conflicted with city ordinance and that the games-played method was preempted by statutory occasional-entrants rule, stating that municipal corporation shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the municipal corporation on twelve or fewer days in calendar year unless individual is a professional athlete.

Statutory occasional-entrants rule, stating that municipal corporation shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the municipal corporation on twelve or fewer days in a calendar year unless individual is a professional athlete, did not violate nonresident professional football player's equal protection rights. Classification of professional athletes as distinct from other occasional entrants neither involved fundamental rights nor proceeded along suspect lines, there was rational relationship between disparity of treatment and legitimate governmental purpose, professional athletes were typically highly paid so that a city could earn significant revenue with comparative ease, professional athletes and their events incurred much larger public burdens relating to police protection and traffic and crowd control than

did other occasional entrants, and imposing limit on local taxation while protecting cities' interest in collecting existing taxes constituted adequate rational basis for General Assembly's actions.

Although city had right to tax the compensation earned by a nonresident professional athlete for his work performed in city, the city's application of its games-played method of allocating income violated due-process rights of nonresident professional football players. Under games-played method, taxable portion of a professional athlete's income was based on number of games the athlete played in city in relation to the total number of games played that year, games-played method resulted in city allocating approximately 5 percent of player's income to itself on the basis of two days spent in city, games-played method reached income that was performed outside of city because it foreseeably imposed city income tax on compensation earned while player was working outside city, and thus, city's income tax, as applied to players, was extraterritorial and violated due process.

Consistent with the rule that the taxing authority could not collect tax on a nonresident's compensation earned outside its jurisdiction, the duty-days method, whereby the numerator represented the number of days spent in the taxing city and denominator represented the total number of work days, properly included as taxable income only that compensation earned in city by accounting for all the work for which nonresident professional football player was paid, rather than merely the football games he played each year, and as such, the duty-days method comported with due process and ensured that the tax collected was not disproportionate to the income received for work in city.