

# **Bond Case Briefs**

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## **TAX - OHIO**

### **Willacy v. Cleveland Board of Income Tax Review**

**Supreme Court of Ohio - May 25, 2021 - N.E.3d - 2021 WL 2093284 - 2021-Ohio-1734**

Taxpayer appealed determination of the Board of Tax Appeals affirming city board of income tax review's denial of her claim for refund of income tax on value of stock options she exercised as a nonresident but received as compensation during her prior employment in city.

The Supreme Court granted taxpayer's petition to transfer appeal.

Holdings: The Supreme Court held that:

- Ordinance's three-year limitations period for city to make a tax assessment of stock options income ran from the date taxpayer exercised her stock options, and
- Res judicata did not preclude city from assessing income tax on value of stock options taxpayer exercised after she retired from employment with employer in city.

Ordinance's three-year limitations period for city to make a tax assessment of stock options income, which prohibited city from making an assessment more than three years "from the time the city income tax was due or the city income tax return was filed, whichever is later," ran from the date taxpayer exercised her stock options, not from the date she was granted the stock options by her employer.

The change to regulation, which provided, as amended, that an employer was not required to withhold municipal income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual was not an employee of either the corporation with respect to whose stock option has been issued or of such corporation's successor entity, did not apply to taxpayer's challenge to city's refusal to refund her income tax assessed on value of stock options she exercised; regulation just relieved an employer of the duty to withhold a tax obligation, it did not render the income nontaxable.

Res judicata did not preclude city from assessing income tax on value of stock options taxpayer exercised after she retired from employment with employer in city, even though city had refunded amounts employer had withheld when taxpayer received stock-option income in prior years when she was still employed by employer; taxpayer failed to show there were any court or administrative proceedings concerning the prior tax years or that city issued the refunds in response to a judgment or adjudication.