

STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
601 DELAWARE AVENUE
WILMINGTON, DELAWARE 19899

TAX NEWSGRAM 72-46

June 12, 1972

TAX APPEAL BOARD DECISION

LICENSES

- Contractors' License Tax - Gross Receipts

QUESTION: The pertinent question is whether gross receipts on contracts entered into prior to July 1, 1969 should include sums paid to subcontractors by the contractor. Gross receipts from contracts entered into prior to July 1, 1969 continue to be taxed at pre-1969 amendment rates whereas gross receipts from contracts entered into after June 30, 1969 are taxed at the new rates.

Payments were made to subcontractors under contracts entered into prior to July 1, 1969. These payments were excluded in determining "gross receipts" for purposes of the contractors' license tax. Tax was computed on the balance using the pre-1969 rates.

Petitioners argued the pre-July 1, 1969 tax resulted in double taxation to the extent of payments to subcontractors and that Legislature reasonably recognized this and corrected this situation even though it might mean for a short time some reduction in revenue.

DECISION: For Petitioner.
The Tax Appeal Board held that the amendment to Section 2501, 30 Delaware Code, eliminating payments to subcontractors from the definition of gross receipts, is not restricted to receipts from contracts entered into after June 30, 1969, but also applies to payments made under contracts entered into prior to July 1, 1969.
Date: 6/5/72
Docket Nos. 464, 474 and 475

QUALIFIED ACQUIESCENCE BY DIVISION OF REVENUE

The Division of Revenue will follow the decision of the Tax Appeal Board in this case only if the taxpayer establishes: (1) the payments were made after June 30, 1969, (2) the subcontractor was subject to and

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complied with the provisions of Chapter 25, 30 Delaware Code, and (3) the exact sums payable to the subcontractor are set forth in a written agreement. In addition, strict proof will be required to establish that the sums paid to subcontractors under pre-July 1, 1969 contracts meet all the requirements of Section 2502 (d) which provides that the lower pre-July 1, 1969 rates will apply only to contracts which (1) are written, (2) are not subject to renegotiation, (3) are for a sum certain, and (4) were executed prior to July 1, 1969.



J. H. Kennedy
Director of Revenue

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