STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **AJANTA C. VORA** for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2020.	:	DETERMINATION DTA NO. 830987

Petitioner, Ajanta C. Vora, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2020.

A formal hearing by videoconference was held before Jennifer L. Baldwin, Administrative Law Judge, on January 24, 2024, with all briefs to be submitted by May 29, 2024,[1] which date commenced the six-month period for the issuance of this determination. Petitioner appeared by her husband, Chetan Vora. The Division of Taxation appeared by Amanda Hiller, Esq. (Peter Ostwald, Esq., of counsel).

ISSUE

Whether petitioner has established that the Division of Taxation erred in denying a portion of her refund claim for tax year 2020 on the basis that income she received as a nonresident from her former employer was New York source income.

[1] Included with petitioner's reply brief were copies of two documents that were not submitted into evidence at the hearing or with petitioner's post-hearing submission. As the record was closed, the documents were returned to petitioner and were not considered in rendering this determination (***see Matter of Schoonover***, Tax Appeals Tribunal, August 15, 1991).

FINDINGS OF FACT

1. Petitioner, Ajanta C. Vora, electronically filed form IT-203, nonresident and part-year resident income tax return, for tax year 2020 on April 8, 2021 (2020 return), requesting a refund in the amount of $10,717.00. In relevant part, petitioner reported $111,681.00 of wages in the federal amount column and $424.00 of wages in the New York State amount column. The amount reported in the New York State amount column represented an allocation of wages based on one day worked in New York State. Attached to the 2020 return was a statement, which explained that:

> "BOTH TAXPAYERS DID NOT RESIDE IN NEW YORK DURING ANY PART OF TAX YEAR 2020, BUT INSTEAD LIVED FIRST IN HAWAII AND THEN WASHINGTON STATE. A FORMER EMPLOYER SUPPLIED AJANTA WITH A 2020 FORM W2 SHOWING NEW YORK WAGES IN ERROR. WE USED 1 DAY ALLOCATION OF WAGES TO NEW YORK SIMPLY BECAUSE THE TAX SOFTWARE WOULD NOT ALLOW E-FILING OF THEIR 2020 NEW YORK TAX RETURN WITH -0- DAYS IMPUTED [sic]."

Also attached to the 2020 return was a federal form W-2, wage and tax statement, for petitioner for tax year 2020 from The Washington Market School (WMS or the School) with a New York, New York, address. The form W-2 indicated that WMS paid petitioner $111,681.00 of wages and withheld $10,744.00 of New York State income tax in tax year 2020.

2. On May 21, 2021, the Division of Taxation (Division) requested that petitioner provide additional information concerning her 2020 return.

3. Petitioner responded to such request with a copy of a letter, dated January 14, 2020, concerning the terms of petitioner's separation agreement and release from WMS (separation agreement). Petitioner also provided a copy of the WMS employee handbook for August 2018 through June 2019 (employee handbook).

4. The separation agreement stated that petitioner's employment with WMS ended on June 30, 2019. With respect to severance pay, the separation agreement provided as follows:

> "**Severance Pay**. If you sign and do not revoke this Agreement, if you return the Agreement within the time frame specified in this Agreement, and comply with its terms and conditions, the School will pay you, as severance pay, in a lump sum, the total gross amount of ONE HUNDRED ELEVEN THOUSAND SIX HUNDRED EIGHTY-ONE DOLLARS AND TWENTY-EIGHT CENTS ($111,681.28), representing ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($100,000.00) which is the equivalent of approximately 76% of your salary of $131,678.00, plus an amount of ELEVEN THOUSAND SIX HUNDRED AND EIGHTY-ONE DOLLARS AND TWENTY-EIGHT CENTS ($11,681.28) towards the cost of purchasing your own health insurance benefits for yourself, *all less standard tax withholdings* ('Severance Pay'). Such Severance Pay will be paid in a lump sum within 30 days following the Effective Date of the Agreement. The Severance Pay will be mailed to the last known address on file (which is listed above) unless you provide the School with another address on or before the date that you sign this Agreement."

The separation agreement also provided as follows:

> "**Release of All Claims**. Except as otherwise set forth in this Agreement, you hereby release, acquit, and forever discharge WMS, its current and former officers, administrators, employees, attorneys, agents, successors, parent, subsidiaries, assigns, and affiliates (the 'Released Party' or 'Released Parties'), of and from any and all claims, liabilities, demands, causes of action, costs, expenses, attorneys' fees, damages, indemnities, and obligations of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to your employment with WMS or separation from employment with WMS, any agreements, events, acts, omissions, or conduct at any time before and up to and including the date you sign this Agreement.
>
> This general release includes, but is not limited to . . .
>
> *In granting the release herein, you understand that this Agreement includes a release of all claims known or unknown. You hereby expressly waive and relinquish all rights and benefits with respect to the release of any unknown or unsuspected claims you may have against the Released Parties.*"

The separation agreement was signed by the "Head of School" of WMS. Petitioner signed the separation agreement on February 11, 2020.

5. The employee handbook, in the employment notices section, provided as follows:

> "**AT-WILL STATEMENT**
> You are an at-will employee, and nothing in this employee handbook shall constitute a contract guaranteeing employment or compensation for any specific period of time.
>
> **At-Will Employment Notice**
>
> As an at-will employee, you or WMS can terminate your employment at any time with or without cause, reason, and/or notice. Nothing contained in any employee handbook, or any workplace policy or rule of WMS and no verbal statements or promises made by employees or agents of WMS shall alter the at-will employment relationship between you and WMS or restrict the option of you or WMS to terminate the employment relationship."

With respect to sabbaticals, the employee handbook provided as follows:

> "Staff members may apply to the WMS Board of Trustees for a sabbatical leave (full pay with benefits for half-time work) after eight consecutive years of full-time employment by The Washington Market School as a Teacher who has been appropriately licensed in Early Childhood Education by the NYS Education Department. Only staff members who have an employment letter to return to full-time WMS employment after the sabbatical are eligible. All sabbaticals are subject to the Board's approval."

There is no such employment letter in the record.

6. On November 12, 2021, the Division issued an account adjustment notice, bearing audit case ID X-189619111, allowing petitioner a refund of $2,841.36 out of the $10,717.00 refund requested. The account adjustment notice explained, in part, the following:

> "We have reviewed the information you sent in response to our audit inquiry.
>
> Based on our review of the documents you provided, along with our telephone conversations, we are unable to verify that the compensation you received from the WASHINGTON MARKET SCHOOL for tax year 2020 is not allocable to New York State as you claim.
>
> Based on available wage reporting data, we have adjusted Line 1 column B of your return to $111,681, to agree with the amount reported to us by your employer.
>
> This adjustment has reduced your allowable refund accordingly."

The account adjustment notice indicated that the Division computed an overpayment of $5,926.14 but, of that amount, $3,084.78 was applied to outstanding New York State tax debts, leaving $2,841.36 available for refund.

7. On November 30, 2021, the Division issued a notice of disallowance, bearing case ID X-189619111 (notice), to petitioner disallowing $4,790.86 of petitioner's refund claim for tax year 2020 for the reasons stated in the account adjustment notice.

8. On May 12, 2022, petitioner filed a timely petition with the Division of Tax Appeals protesting the notice. In section VII of the petition, petitioner indicated that the amount of tax contested was $4,790.86.

9. Petitioner's husband, Chetan Vora, testified on behalf of petitioner at the hearing. Mr. Vora explained that petitioner worked for WMS for 11 years and, during that time, he and petitioner lived in New York. Petitioner took a sabbatical leave from WMS for personal reasons, and they left New York and moved to Hawaii at the end of June 2018. Petitioner was terminated by WMS via an email sent at the end of May 2019. In 2020, while still living in Hawaii, petitioner received the severance payment. Mr. Vora further explained that the severance payment was to remedy the fact that petitioner "lost [her] entire calendar school year of potential employment elsewhere."

CONCLUSIONS OF LAW

A. New York State imposes personal income tax on the income of nonresident individuals to the extent that their income is derived from or connected to New York sources (***see*** Tax Law §§ 601 [e]; 631 [a] [1]). Income derived from or connected to New York sources includes income attributable to a business, trade, profession or occupation carried on in New York State (***see*** Tax Law § 631 [b] [1] [B]). Income related to a business, trade, profession or

occupation "previously" carried on in New York State is also derived from or connected to New York sources pursuant to Tax Law § 631 (b) (1) (F):

> "income received by nonresidents related to a business, trade, profession or occupation previously carried on in this state, whether or not as an employee, including but not limited to, covenants not to compete and termination agreements. Income received by nonresidents related to a business, trade, profession or occupation previously carried on partly within and partly without the state shall be allocated in accordance with the provisions of subsection (c) of this section."

Subparagraph (F) was added to Tax Law § 631 (b) (1) effective January 1, 2010 (***see*** L 2010, ch 57, part B, § 1; ***see also*** Dept of Taxation & Fin Technical Mem, TSB-M-10(9)I, income received by a nonresident related to a business, trade, profession, or occupation previously carried on within New York State, August 31, 2010). The Tax Appeals Tribunal has explained that Tax Law § 631 (b) (1) (F) was added to the Tax Law "to counter the 'widespread abuse of post-employment severance packages' perceived to have resulted from two Tribunal decisions, each of which determined that consideration given for post-employment noncompetition agreements was not New York source income" (***Matter of Murphy***, Tax Appeals Tribunal, December 16, 2016, ***confirmed on other grounds*** 166 AD3d 1096 [3d Dept 2018], citing Dept of Taxation & Fin Mem in Support, Bill Jacket, L 2010, ch 57 at 6; ***Matter of Haas***, Tax Appeals Tribunal, April 17, 1997; ***Matter of Penchuk***, Tax Appeals Tribunal, April 24, 1997).

B. By the terms of the separation agreement, petitioner received severance pay computed as a percentage of her salary plus health insurance costs. The separation agreement provided that petitioner would be paid such amount if she complied with the terms of the agreement, one such being a general release of all claims against WMS "arising out of or in any way related to [her] employment with WMS or separation from employment with WMS." Mr. Vora testified that the

severance payment was to compensate petitioner for "los[ing] [her] entire calendar school year of potential employment elsewhere." Based on the foregoing, the severance payment is New York source income under Tax Law § 631 (b) (1) (F) as "income received by [a] nonresident[] related to a business, trade, profession or occupation previously carried in this state . . . including . . . termination agreements." The legislative history of Tax Law § 631 (b) (1) (F) also supports this result (***see Matter of Murphy***). As there is no indication in the record that petitioner's former employment was not entirely carried on in New York State, all of the severance payment was properly allocated to New York State.

C. Petitioner relies on ***Matter of McSpadden*** (Tax Appeals Tribunal, September 15, 1994) in support of her position that the severance payment is not New York source income. In ***McSpadden***, the Tax Appeals Tribunal concluded that a lump-sum buyout the taxpayer therein received from his former employer did not constitute New York source income (***id.***). ***McSpadden***, however, is not on point. First, the Tribunal's decision was issued before subparagraph (F) was added to Tax Law § 631 (b) (1) and, thus, does not address whether the lump-sum payment in ***McSpadden*** was New York source income as income related to a business, trade, profession or occupation "previously" carried on in New York State. Second, while not specifically referenced in the legislative history, ***McSpadden's*** reasoning is similar to that in ***Haas*** and ***Penchuk***, which were specifically named in the legislative history of Tax Law § 631 (b) (1) (F) as the impetus for its enactment.

Finally, relying on the employee handbook, petitioner argues that she had a "guaranty to employment" similar to that in ***McSpadden***. The employee handbook provided that "[o]nly staff members who have an employment letter to return to full-time WMS employment after the sabbatical are eligible" for a sabbatical leave. There is no employment letter in the record and,

without such, it must be determined that petitioner was an at-will employee as also provided by the employee handbook ("[y]ou are an at-will employee, and nothing in this employee handbook shall constitute a contract guaranteeing employment or compensation for any specific period of time"). Nevertheless, even if petitioner did have a "guaranty to employment" at WMS, it would not change the result herein as the severance payment is income related to petitioner's former employment at WMS and, thus, New York source income pursuant to Tax Law § 631 (b) (1) (F).

D. Petitioner also argues that the severance payment "is akin to out of court tort damages." As noted, the separation agreement included a general release of all claims related to petitioner's employment or termination with WMS. A standard or general release that lists a wide range of claims and does not accord a payment to a specific claim is in the nature of severance pay and not damages received in settlement of litigation (***see Matter of Delardi***, Tax Appeals Tribunal, March 18, 1999).

E. The petition of Ajanta C. Vora is denied, and the notice of disallowance, dated November 30, 2021, is sustained.

DATED: Albany, New York
October 31, 2024

/s/ Jennifer L. Baldwin
ADMINISTRATIVE LAW JUDGE