



PEO DID NOT SELL HELP SUPPLY SERVICES

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The Commonwealth Court en banc affirmed a panel decision that a professional employer organization (PEO) did not provide **help supply services** taxable for Sales and Use Tax purposes, but on different grounds. *All Staffing, Inc. v. Commonwealth*, No. 325 F.R. 2006 (Pa. Commw. Dec. 2, 2010), *aff'g All Staffing Inc. v. Commonwealth*, 987 A.2d 849 (Pa. Commw. 2010). The PEO provided human resources -related services to clients by placing the client's employees on the PEO's payroll, enabling the PEO to deliver services at a competitive cost due to the savings realized with a single payroll data system and specialized knowledge applied to a large number of clients. The PEO performed all aspects of human resource administration. The Department assessed the taxpayer for the fee it charged to its clients, but did not impose tax on the reimbursement from the client to the taxpayer for the employee payroll and related benefits costs. The court held that the PEO's activities did not constitute help supply services, because the definition required **providing** temporary or continuing help where the help supply is on the payroll of the PEO but is under the supervision of the client. 72 P.S. §7201(cc). Since the PEO never added an individual to the payroll, but simply transferred existing payroll to its system and conformed automatically to any hiring or firing decisions by the client, the PEO could not be said to have **supplied** any help. The court found that the taxpayer's activities were not of the same kind as the activities specified in this statute and regulation as constituting help supply service. The court found it to be immaterial that the definition of PEO was changed by the US Census Bureau for purposes of North American Industrial Classification System. Rather, what counted was the actual activity performed by the taxpayer. The court en banc did not discuss the rationale in the panel decision that the assessment was in error because the Department assessed the charges by the taxpayer to the client and did not assess the reimbursements by the client to the taxpayer for the payroll, benefits and related charges.