

April 25, 2008

IN RE: 7TH STREET METHODIST EPISCOPAL CHURCH
DOCKET NO: 35WRMERZX2072

STATEMENT OF RECORD:

1. 7th Street Methodist Episcopal Church (hereafter “Petitioner”) filed a petition for appeal with the Tax Review Board to review water/sewer charges for the property at 1938 North 7th St. Philadelphia, Pa.
2. A hearing before the Tax Review Board was held on November 11, 2007 following which the board announced its decision to abate the penalties accrued against the account and allow Petitioner to enter into a payment agreement not to exceed 48 months for the remaining balance.
3. Petitioner has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner was represented by Millicent Clark, chairperson of the Trustee Board of the church.
2. The periods in question were April 23, 2001 through May 4, 2005. The principal amount due was \$4882.11, penalty due as of the hearing date was \$142.09, lien charges were \$10, for a total due of \$5034.20.
3. The outstanding usage covered 252 months of service, or a period of 21 years when water/sewer bills were not fully addressed for this property.
4. Ms. Clark explained the previous leadership of the church had not dealt with the water bill issue and that new leadership was coming forward now to address the delinquency.
5. Ms. Clark testified that to her knowledge, the building had been in use in 1997 and 1998 but then had been vacant for a number of years until the church started to rehabilitate it for use as a youth facility for the community. She did not speak to any earlier years. She did not provide any documentation to establish that the outstanding usage charge was incorrect.
6. Ms. Clark explained to the Board that the current church trustees wanted to address this delinquency and pay what was owed but due to financial hardship could not meet the full obligation.

CONCLUSIONS OF LAW:

The City of Philadelphia representative stated her objection to proceeding on jurisdictional grounds that the petition had not been filed in a timely manner. The Philadelphia Code Chapter 19-1705(1) states that Petitions for Review “shall be filed with the Tax Review Board within 60 days after the mailing of a notice” relating to any money or unpaid claim due to the City or School District of Philadelphia.

Although, the petitioner's representative acknowledged that past leadership of the church had failed to act, she also stated that she and the current leadership had been actively pursuing a resolution with the city for several years, and that as a non-profit, volunteer organization did not have the continuity in leadership that may have been needed to fully attend to the property.

After consideration, it was the decision of the Board to have the case go forward since she had established that they had acted upon learning of the delinquency.

The burden of proof is on the petitioning party to establish by substantial evidence that the city's assessment is incorrect. Ernest Renda Construction Co., v. Commonwealth, 94 Pa. Commonwealth Court. 608, 504 A.2d 1349 (1986). However, Ms. Clark was unable to meet this burden of proof to establish that the bill was incorrect or the usage or service charges charges inaccurate or unwarranted. There was no evidence presented that a Discontinuance Permit had been sought at any time to terminate service charges nor any evidence put forth to show that the water had not been used at the property. Although Ms. Clark testified that the property had been vacant beginning in 1998, she acknowledged that it had been occupied for at least 2 years prior to 1997, presumably with water being used, and did not address the question of how long it had been vacant after 1998. In addition, she could not tell the Board the status of the property prior to 1997 with regard to occupancy and water usage. There was no basis for the board to conclude that the city's billing was incorrect.

The Philadelphia Code Chapter 19-1705 gives to the Tax Review Board the authority to abate interest and penalties where in the Board's determination the taxpayer has acted "in good faith and without negligence and no intent to defraud." It was the decision of the Board that the Church trustees were making a good faith effort to address the delinquent water bills and that an abatement of penalties was warranted provided that they made arrangements to pay the principal since they were unable to show that the principal amount due was in error. In addition, taking into account their financial situation, the Board extended the allowable payment agreement to 48 month which would put the required monthly payments at approximately \$100 should the petitioners choose to avail themselves of the full 48 month period for payments.

Concurred:

Derrick Johnson, Chairman

Una Vee Bruce

Joseph Ferla