

Corrected Opinion dated February 25, 2005

IN RE: **RAMARA, INC.**
DOCKET NO: **36REINPZZ6109**

STATEMENT OF RECORD:

1. Ramara, Inc. (hereafter "Petitioner") filed a petition for waiver of interest and penalty for Real Estate taxes on the property located at 4408 City Avenue Philadelphia, Pa.
2. A public hearing was held before the full Tax Review Board on October 19, 2004. At the close of the hearing the Board announced its decision to abate interest, penalties and lien charges for the year 2003, with any resulting overpayment to be applied toward Petitioner's 2004 tax liability.
3. The City of Philadelphia has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner owns the property located at 4408 City Avenue Philadelphia, Pa., which operates as a hotel known as North American Motor Inns.
2. Mr. Jose Garcia, an employee of the corporation, represented Petitioner at the Tax Review Board hearing.
3. Mr. Garcia appeared before the Tax Review Board requesting abatement of all interest and penalty accrued against the delinquent real estate taxes for the year 2003 for this property. He also appealed for the waiver of any future accrual of interest and penalty on the tax principal as the company made periodic payments for both 2003 and 2004 liabilities.
4. At the time of the hearing, Petitioner had paid all 2003 liabilities and had made some payments toward the 2004 tax. The 2003 principal paid was \$77,701.43, interest and penalty was \$9463.55, and liens and legal fees totaled \$5251.10.

The tax amount due for 2004 was \$79,344.40, toward which Petitioner had made payments totaling \$19,367.39, including \$1840.34 of additions because Petitioner had been making payments through the year rather than paying it in full early in the year.

5. Mr. Garcia testified that he learned in May 2004 that Petitioner owed approximately \$168,000 in real estate taxes for the years 2003 and 2004. A phone call to the City of Philadelphia Revenue Department provided the information that approximately \$13,000 of that total due was interest and penalties.
6. On or about July 2, 2004, Mr. Garcia went to the Revenue Department to set up a payment plan for the tax principal and to request that the City abate all currently accrued interest and penalties as well as halt the accrual of any future interest and penalties for the life of the payment agreement.

Revenue Department representatives told Mr. Garcia that while a payment plan could be arranged, interest and penalty would continue to accrue until the payments were completed.

As to the already existing interest and penalty, he was offered an abatement of one-half of the existing interest and penalties.

7. Mr. Garcia chose to appeal to the Tax Review Board for abatement of interest and penalties, rather than accept the Revenue Department agreement. However, Petitioner did make substantial payments toward the liabilities even without the benefit of a formal agreement.

CONCLUSIONS OF LAW:

The City of Philadelphia pursuant to The Philadelphia Code Chapter 19-1300 imposes the Real Estate Tax. The Board of Revision of Taxes (BRT) is the city agency responsible for assessing property value and, calculating the tax due. As such, the BRT has its own appeal process for those property owners who desire to appeal or protest the tax principal and its underlying assessment.

The Tax Review Board has the authority to abate such interest and penalties, as it believes warranted, using as its standard of review whether a taxpayer has acted in good faith and without negligence or intent to defraud. The Philadelphia Code Chapter 19-1705(2).

Therefore in matters involving real estate taxes, the Tax Review Board takes jurisdiction only for interest, penalties, and lien charges accrued or assessed on delinquent taxes, that is, taxes due for prior years or paid in a year later than the year they were first due.

The Philadelphia Code Chapter 19-1303(1) allows for a discount of 1% on “real estate taxes paid up to and including the last day of February of the year in which such taxes shall be assessed and due...”. Therefore if a taxpayer paid real estate taxes due for 2004 on or before February 28, 2004, a 1% discount was allowed. This discount was unavailable if the taxes were paid in March 2004.

For each month in 2004 thereafter, an additional 1½% *of tax* (emphasis added) was imposed through December 2004 for a total *addition* (emphasis added) of 13 ½ %. On January 1, 2005, if the 2004 real estate taxes remain unpaid, an addition of 15% of tax principal is added, and interest and penalty begin to accrue on the delinquent tax amount. The Philadelphia Code Chapter 19-1303(2), (3), (4).

The special discount, for payments made before the last day of February, and “additions” may apply to real estate taxes due on a property depending on when during the year the taxes are paid. “Additions” or capitalization are not the same as interest or penalties. “Additions” add tax principal to a taxpayer’s liability.

The Tax Review Board does not review current year open balances for real estate taxes because there is no interest and penalty accrued on these balances. Therefore, during the calendar year 2004, the Tax Review Board would not review real estate taxes due for the calendar year 2004 because there would be no interest and penalty accrued against the tax principal. Interest and penalty would only begin to accrue on January 1, 2005 for 2004 taxes.

Petitioner requested a review of the years 2003 and 2004. The petition was filed on July 8, 2004 and the public hearing was October 19, 2004. Therefore, there was only interest and penalty due and reviewable by the Tax Review Board for the 2003 year tax.

The first part of the Tax Review Board decision was to abate interest, penalties and lien charges accrued against the 2003 tax year.

Part two of the decision was that the interest, penalty and lien charges for the 2003 tax year that had been paid by Petitioner and that were being abated by the Board's decision were to be applied toward any outstanding balance due for the 2004 Real Estate taxes.

As to the 2004 tax year, no interest or penalties had as yet accrued because the 2004 Real Estate taxes were not delinquent as of the hearing date. Any amounts due that were over and above the base tax bill for 2004 as issued prior to February 28, 2004 were "additions" or capitalization, adding to the principal tax amount due, and not interest or penalty that would fall within the jurisdiction of the Tax Review Board. Therefore there was no action to be taken by the Tax Review Board with respect to the 2004 tax year.

The Tax Review Board abated interest and penalty as a result of the evidence presented by both the Petitioner's representative and the City's representatives that established that Petitioner had shown good faith by making payments of more than \$110,000 between July and October of 2004 to pay the 2003 liability in its entirety and a portion of the 2004 liability. However, since there was still an open balance for 2004 taxes, the Board directed that the abated monies be applied towards that open balance rather than be refunded to Petitioner.

Concurred:

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