October 14, 2014

In Re: 1524 Sansom St., Inc.
Docket No:36LSMERZZ9897

Statement of Record:

1. A Petition for Appeal was filed with the Tax Review Board on September 20, 2013 on behalf of 1524 Sansom St., Inc. (Petitioner) requesting review of Liquor Sales Tax due the City of Philadelphia for the years 2002 through 2010.
2. A public hearing was scheduled before the Tax Review Board (TRB) on February 6, 2014 continued at Petitioner's request.
3. A public hearing was scheduled before the TRB on April 15, 2014. At the conclusion of the hearing, the matter was taken under advisement.
4. A public hearing was scheduled for May 13, 2014 for the rendering of the TRB decision. The decision announced at that time was to abate 50% of the interest and 100% of the penalties contingent on entering into a payment plan within 60 days of the date of the revised bill.
5. Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

1. Petitioner filed an appeal requesting review of the Liquor Sales Tax (LST) due for the years 2002 through 2010 for the business operating at 1524 Sansom St. Philadelphia, Pa and doing business as Oscar's Tavern. The principal due was [redacted] with interest of [redacted] and penalty of [redacted] as of the TRB hearing date, for a total due of [redacted]
2. Throughout the tax years in question, the petitioner corporation's sole shareholder was Harry Chodak.
3. In 2007, Harry Chodak made a payment of [redacted] for LST but did not file returns or remit LST for any previous or subsequent years.
4. Harry Chodak passed away in 2011 and the corporation's shares were inherited by his son, Richard Chodak, who filed the TRB petition and was present at the TRB hearing. Richard Chodak was not involved with running this business until 2011.
5. In 2013, Petitioner received notice from the City of Philadelphia Revenue that the city was preparing to revoke its Commercial Activity License for failure to file Liquor Sales Tax (LST) returns and remit payment for the years 2002 through 2013.
6. Richard Chodak testified that this 2013 notice was the first time that he learned of the existence of the LST. When he inherited the corporation and the business he continued to run it as his father had run it. He filed the returns his father filed and since there was no evidence that his father had filed LST returns from 2002 through 2010, he knew nothing

of this tax, and therefore did not file LST tax returns for the years going forward under his stewardship.

7. Upon receiving the city's notice in the summer of 2013, Richard Chodak contacted Petitioner's accountant and had the returns from 2002 through 2010 prepared and filed using the corporation's tax returns for those years, so the LST returns were prepared based on actual sales information and accepted by the city as such.
8. Petitioner requested abatement of all tax principal, interest and penalties for the years 2002 through 2010, as the current sole shareholder, Richard Chodak, was not the corporation owner during those years and was completely unaware of this tax and tax liability.
9. Richard Chodak admitted that collection of these taxes were the responsibility of the corporation as the business owner. There was no assertion that the taxes had been paid or were not due to the City.
10. Even after taking over the ownership of the corporation in 2011, Richard Chodak did not learn of this tax until 2013 when alerted by the city and therefore, at the time of the hearing, LST was also due for years after 2011, although these tax years were not part of this appeal and Richard Chodak agreed they were due and owing.
11. Petitioner argued that the city bore some responsibility for not chasing Petitioner or Harry Chodak for the LST after the 2007 remittance alerted the city to Petitioner's liability for this tax and therefore the taxes, interest and penalties should be waived so Petitioner could start fresh under its new ownership.
12. Richard Chodak could not explain why his father did not file and remit this tax when clearly, at least from 2007, his father was aware of this tax and his responsibility for collecting it. Richard Chodak also testified that Petitioner's accountant told him that he did not prepare LST returns each year along with other tax returns because he believed Harry Chodak was filing these returns on his own based on Harry's statements.

Conclusions of Law:

Pursuant to The Philadelphia Code Chapter 19-1085 the Liquor Sales Tax is applied to the sale price of alcoholic beverages purchased at bars, restaurants, catered events, and at retail stores. All Liquor Tax collections support the School District of Philadelphia.

The City of Philadelphia Liquor Sales Tax Regulations provide guidance as follows:

Section 103. Taxable Transactions

(a) Every sale at retail by any hotel, restaurant, club or other person holding a license or permit issued by the Commonwealth of Pennsylvania to sell or dispense liquor or malt and brewed beverages is subject to tax.

Section 201. Imposition and Rate of Tax

(a) The subject tax is imposed upon each separate sale at retail as defined herein within the School District of Philadelphia at the rate of ten percent (10%) of the sales price.

Section 301. Collection, Returns and Payment of the Tax
(a) Every vendor shall collect the tax as agent for the Board of Education of the School District of Philadelphia from the purchaser at the time of making the sale and shall remit the tax to the Commissioner.
(b) Any vendor required under the ordinance to collect tax from another person, who shall fail to collect the proper amount of tax, shall be liable for the full amount of the tax which he should have collected, and in addition shall be subject to any other remedies at law or in equity.

There is no dispute that the establishment run by the petitioner corporation for all years in question and through to the present had a legal responsibility to collect the LST from patrons and and remit the tax to the City of Philadelphia for the benefit of the School District of Philadelphia. Failure to remit the tax whether an intentional act or through ignorance of the shareholder responsible for managing the corporation's affairs does not absolve the corporation of this liability.

While there is no way to know when Harry Chodak first became aware of the City's LST, clearly by 2007 it had been brought to his attention as that was the year he made the payment of [redacted] And yet, for subsequent years up to his death in 2011 he did not make another payment or file a return for the LST.

Richard Chodak assumed control of the corporation after Harry's passing in 2011 and assumed responsibility for the corporation's affairs. The fact that he made no inquiries beyond carrying on his father's practices, again, does not absolve the corporation of this liability.

A corporation is a legal entity separate and apart from its shareholders. The law treats a corporation as a legal "person". It continues as on ongoing entity even as its shareholders may change from time to time. Its tax liabilities are attached to the corporate entity regardless of the shareholders.

Other than putting himself at the mercy of the TRB, Mr. Chodak provided no basis for abatement of the tax principal in this matter. Petitioner's attorney argued that the city should bear some responsibility for not contacting Harry or Richard Chodak when returns were not filed and for not being aggressive sooner in its efforts to collect the taxes due. There was no evidence as to whether the city did or did not pursue Harry Chodak or the petitioner corporation for the LST through the years. And clearly, Harry Chodak was aware that Petitioner was responsible to collect and remit this tax, at the very least from 2007 to his death in 2011.

The LST is a self assessed tax and taxpayers bear the responsibility for computing and remitting with the appropriate forms any tax that is due. In addition, for purposes of LST, the taxpayer is acting as agent for the City by collecting this tax from patrons who have purchased drinks subject to the tax.

Petitioner had the professional services of an accountant at its disposal and therefore the resources to have notice of all tax filing requirements.

The Philadelphia Code Chapter 19-170(2) provides that "(u)pon the filing of any petition for the waiver of interest and penalties accruing upon any unpaid money or claim collectible by the Department of Revenue, for or on behalf of the City or the School District of Philadelphia, the Tax Review Board may abate in whole or in part interest or penalties, or both, where in the opinion of the Board the petitioner acted in good faith, without negligence and no intent to defraud."

In this circumstance, Richard Chodak was not the shareholder for this corporation during the time that these liabilities accrued. He did step forward when notified, filed the missing returns and the TRB petition in a timely manner. While this does not warrant an abatement of the tax principal, which Mr. Chodak does acknowledge is due, it does speak to the issues of good faith and lack of intent to defraud the city such that the TRB was able to arrive at a decision to abate the penalty and ½ of the interest accrued against the principal with 60 days from the revised bill to enter a payment arrangement for the balance due.

Concurred:
Nancy Kammerdeiner, Chair
Joseph Ferla
Christian DiCicco, Esq.
George Mathew, CPA