

October 3, 2011

**IN RE: Joseph Vaccone**

**Docket Nos. 26NUMERZZ7974, 26NUMERZZ7977, 26NUMERZZ7978**

**STATEMENT OF RECORD:**

1. Joseph Vaccone (hereafter "Petitioner") filed Petitions for Appeal with the Tax Review Board (TRB) on April 27, 2011 requesting review of certain bills issued for work performed on the property located at 1624 South 2<sup>nd</sup> St. pursuant to nuisance abatement notices issued by the City of Philadelphia Department of Licenses and Inspections (L&I).
2. TRB Docket No. 26NUMERZZ9974 was assigned to the petition filed requesting review of L&I bill #023452 for demolition activity. The City of Philadelphia Agency Receivables print out attached to the petition stated a bill date for this work of June 28, 2001.  
TRB Docket No. 26NUMERZZ7977 was assigned to the petition filed to request review of L&I bill #029004 for stucco work. The City of Philadelphia Agency Receivables print out attached to the petition stated a bill date for this work of June 9, 2001.  
TRB Docket No. 26NUMERZZ7978 was assigned to the petition filed to request review of L&I bill #210029 for stucco work. The City of Philadelphia Agency Receivables print out attached to the print out stated a bill date of March 11, 2002.
3. All petitions were returned to Petitioner on May 2, 2011 as being filed untimely pursuant to The Philadelphia Code Chapter 19-1702, with an explanation that the TRB "may consider accepting a late petition if the petitioner can clearly establish that the late filing was based on circumstances outside of his/her control."
4. Petitioner, through his attorney, responded on May 16, 2011, with an explanation that Petitioner first became aware of these bills as nuisance abatement liens on or about April 6, 2011 at the settlement for this property where he became the property owner. According to Petitioner, at the time of settlement, the "(s)ellers assigned all of these rights to contest and/or litigate these liens to Mr. Vaccone."
5. After reviewing Petitioner's documentation explaining the late filing of the petitions, on May 17, 2011 the TRB denied petitioner's request to proceed nunc pro tunc.
6. Petitioner was notified by letter dated May 20, 2011 of the TRB decision.
7. Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

**DISCUSSION:**

The Philadelphia Code Chapter 19-1702 requires:

- (1) Every petition for review of any decision or determination relating to the liability of any person for any unpaid money or claim collectible by the Department of Revenue, for or on behalf of the City or the School District of Philadelphia, including, but not limited to, any tax, water or sewer rent, license fee or other charge, and interest and penalties thereon, shall be filed with the Tax Review Board within 60 days after the mailing of a notice of such decision or determination to the petitioner.

The bills under appeal were issued on 2001 and 2002. The petitions to the Tax Review Board were filed on April 27, 2011, well beyond the 60 day jurisdictional limit set in the above cited Philadelphia Code section, and therefore beyond the time frame for acceptance by the TRB.

The TRB has adopted a nunc pro tunc policy that provides an opportunity for petitioners whose petitions are being filed beyond 60 days from the assessments or bills under appeal to request consideration of their appeal and a waiver of the 60 day filing limit based on information they may supply to “demonstrate that the untimely filing of their petitions was due to circumstances beyond their control, not a result of any negligence or laxity on their part, where any delay was corrected as quickly as possible, and where such delay in filing has not prejudiced the ability of the City to present and defend its assessment bill.”

Petitioner was so notified and provided an opportunity to offer evidence to meet the nunc pro tunc standard.

Petitioner’s basis for his request to the TRB to waive the 60 day filing limitation is an assignment by the prior owner of his rights to contest or litigate these claims by the city. This assignment was also made on or about April 27, 2011 at the time that Petitioner purchased the property from the assignor.

However, in April 2011 when the assignment occurred, the seller/assignor’s right to file an appeal with the TRB had already lapsed, as the bills at that time were well over 8 years old. There was no information from the owner at the time the bills were issued as to why he failed to file a timely appeal. If Petitioner is to stand in the shoes of the previous owner through this Assignment of Rights, he can only take those rights that the prior owner had to give, which in 2011 did not include a right of appeal to the Tax Review Board for these nuisance abatement bills.

Although Petitioner may have acted as quickly as possible once he learned of the bills and had possession of the property, this does not meet the Board’s standard. An interpretation that allowed a subsequent property owner to restart the 60 day appeal limitation, regardless of how long ago the bills were actually issued, would act to prejudice the City as its effect would be to nullify the statutory limitation and leave open the possibility of an administrative appeal possibly forever, thus extinguishing the City’s right to consider a matter closed at a definitive point in time and thereby no longer have to be responsible for preserving documentation and witness testimony for aged or stale claims.

Therefore, the decision of the TRB was to deny the petition.

Approved:

T.David Williams, Esq., Chair