

February 10, 2009

**In Re: 20th Century Gospel Crusades of America
Docket No: 36REREFZZ9785**

STATEMENT OF RECORD:

1. A petition for refund of Real Estate Taxes for the years 1989 through 2002 was filed with the Tax Review Board on January 22, 2007 by 20th Century Gospel Crusades of America (hereafter "Petitioner").
2. On April 10, 2007, a public hearing was held before a Tax Review Board Master. The decision of the Master, as ratified by the Tax Review Board, was to deny the petition.
3. Petitioner requested, and was granted, a hearing before the full Tax Review Board.
4. A public hearing before the Tax Review Board was held February 21, 2008 following which the matter was taken under advisement and the parties advised to submit any additional documents for the Board to consider within 2 weeks of the hearing.
5. On September 30, 2008, the Tax Review Board announced its decision to deny the petition.
6. Petitioner has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner filed a petition with the Tax Review Board to appeal the City of Philadelphia Department of Revenue denial of petitioner's request for a refund of Real Estate taxes for the years 1989 through 2002. The amount of the refund requested was \$17,571.15.
2. Petitioner owns the property at 1253-55 South 18th St. Philadelphia, Pa. and was the property owner for all years in question.
3. Petitioner has always operated as a church at this location.
4. Petitioner was represented at the hearing by the church's associate pastor, Reverend John B. Craig.
5. Petitioner was originally granted tax exempt status by the Board of Revision of Taxes (BRT) for this property in 1968.
6. In 1989, a new deed was recorded for the property. There was no evidence presented as to the circumstances or facts surrounding the new deed, although there was some testimony that the owner's name on the new deed was similar but not identical to as on the previous deed. No explanation was provided.
7. When the new deed was recorded the property tax exemption did not automatically carry over after the new deed was recorded. The name change on the deed may have been the reason but there was no clear explanation provided by the city or Petitioner's representatives.
8. Petitioner began receiving Real Estate Tax bills in 1989 and paid them without question through 2002.
9. In 2002, Reverend Craig became associated with the church and upon seeing the Real Estate Tax bill for the property questioned why the church did not have an exemption from the tax.
10. He began to investigate the situation and upon learning that Petitioner's tax exempt status had been dropped in 1989 after the filing of the new deed, Reverend Craig filed a nunc pro tunc petition with the BRT. On October 31, 2006, the BRT granted the petition and restored Petitioner's tax exempt status for the years 1989 through 2002.

11. Following the BRT decision, Petitioner filed a refund petition with the Department of Revenue promptly. The city issued a refund check on November 6, 2006 and subsequently stopped payment on the check after concluding that it had been issued in error.
12. Petitioner was then informed, by a letter dated November 17, 2006, that their refund request was being denied because it was beyond the statute of limitations.

CONCLUSIONS OF LAW:

The Philadelphia Code Chapter 19-1703(1) regarding refunds, permits the Department of Revenue to “grant a refund, in whole or in part, upon determination that a tax, water or sewer rent, license fee or other charge, interest or penalty, or any part thereof, has been paid under mistake of law or fact, or under an invalid law.”

Chapter 19-1703(1)(d) continues with the requirement that “(e)very petition for refund of moneys collected by the Department on or after January 1, 1980, for or on behalf of the City or the School District of Philadelphia...shall be filed with the Department within 3 years from the date of payment...or the due date, whichever is later.”

Petitioner’s refund request filed in 2006 for the tax years 1989 through 2002 was beyond the 3 year statute of limitations stated above.

Petitioner requested that the nunc pro tunc decision of the Board of Revision of Taxes to grant the tax exemption issued in 2006 be considered as a starting date for purposes of the refund request.

A similar issue was considered in City of Philadelphia and School District of Philadelphia v. Tax Review Board of the City of Philadelphia to the use of Philadelphia Fresh Food Terminal Corporation, 945 A.2d 802; 2008 Pa. Commw. LEXIS 132 where the petitioner requested the Tax Review Board accept the date of a nunc pro tunc decision by the Board of Revision of Taxes as the tax due date for purposes of a refund request for Use and Occupancy Taxes that would otherwise have been considered beyond the statute of limitations of The Philadelphia Code Chapter 19-1703(1)(d). In upholding the Philadelphia Court of Common Pleas decision to overturn the Tax Review Board, it was the finding of the Court that this section of the Code sets forth a statute of repose.

“(S)tatutes of repose run for a statutorily determined period of time after a definitely established event independent of an injurious occurrence or discovery of the same.” DaimlerChrysler Corporation v. Commonwealth, 885 A.2d 117, 121 (Pa. Commw. 2005)(quoting Miller v. Stroud Township, 804 A.2d 749,752 (Pa. Commw. 2002) aff’d, 592 Pa. 612, 927 A.2d 201 (2007).

In Philadelphia Fresh Food Terminal Corporation, the Court concluded that “section 19-1703(1)(d) establishes a definitive amount of time in which one has to file a refund request. Moreover, the three year period begins to run after a definitively established event, the later of the payment date or the due date. Thus, section 19-1703(1)(d) is a statute of repose. Consequently, because Taxpayer paid his taxes by the due date, taxpayer’s right to a refund for taxes paid in 2000 and 2001 was extinguished by the end of 2004”. The Court did not find that the nunc pro tunc decision by the Board of Revision of Taxes, that retroactively lowered the property assessment and thereby the resulting tax due, in any way altered the measuring date for requesting a refund of taxes paid under the prior assessment.

Petitioner in this case is in the same position, having paid the taxes on a timely basis each year from 1989 through 2002 and then filing for a refund in 2006, after a nunc pro tunc ruling of the Board of Revision of Taxes.

The decision of the Tax Review Board was to deny the petition.

Concurred:

Derrick Johnson, Chair
Joseph Ferla
Una Vee Bruce