

December 22, 2008

In Re: **Mohamed S. Basal**
Docket Nos: **36NPMERZZ9386**
36BPMERZZ8629

Statement of Record:

1. Mohamed S. Basal (hereafter "Petitioner") filed a petition for review with the Tax Review Board for Business Privilege Tax (BPT) and Net Profits Tax (NPT). The petition was filed on February 28, 2008.
2. A public hearing before a Tax Review Board Master was held on April 23, 2008. The decision of the Master, as ratified by the Tax Review Board, was to abate $\frac{1}{4}$ of the interest and $\frac{1}{4}$ of the penalty accrued against his accounts.
3. Petitioner requested and was granted a hearing before the full Tax Review Board.
4. On June 3, 2008, a public hearing was held before the Tax Review Board. The decision of the Board, as announced at the end of the hearing, was to abate one-half of the interest and one-half of the penalty accrued against the Business Privilege Tax liability, and to abate one half of the interest and the full penalty accrued against the Net Profits Tax liability. These abatements were contingent on a payment agreement being entered into within 90 days.
5. Petitioner has appealed to the Philadelphia Court of Common Pleas.

Findings of Fact:

1. Petitioner filed an appeal with the Tax Review Board for the following tax assessments by the Philadelphia Department of Revenue:

Business Privilege Tax for the years 2001 through April 15, 2007, with principal due of \$6,376.00, interest accrued to the hearing date of \$2126.24, and penalty accrued to the hearing date of \$3614.20, for a total due of \$12,116.44.
Net Profit Tax for the years 2001 through 2006, with tax principle due of \$395.00, interest accrued to the hearing date of \$158.62, and penalty accrued to the hearing date of \$257.55, for a total due of \$811.17.
2. Petitioner is a language interpreter, working for an agency that provides interpreter services.
3. Petitioner testified that 50% of his job as an interpreter involved working from home, via phone or internet. For 4 hours per day, beginning at 4p.m., he testified that he worked from home in Philadelphia.
"Anything in the morning, anything before 4p.m. is outside of the city."
See Notes of Testimony, Page 2.

4. Petitioner was paid as an independent contractor for his interpreter services.
5. He used a CPA to prepare and file his federal and state tax returns.
6. Petitioner testified that he did not file City tax returns because beginning in 2001, each year he attempted to get a Business Privilege License from the Department of Licenses and Inspections but was rebuffed because they could not determine the appropriate identification code for his business. In 2007, he successfully applied for and received a Business Privilege License.
7. City tax returns were filed in 2008.
8. Petitioner requested that the City accept home office expense deductions and an allocation of 50% to account for time spent working outside of Philadelphia. Petitioner did not supply substantiation for his expenses or travel time, as requested by the City's auditor.
9. When presented with his City tax returns, filed in 2008, Petitioner could not say whether the tax amount listed as due on the returns reflected the deduction of any claimed expenses or the 50% allocation.
10. Petitioner admitted, when questioned by the City's attorney, that for some of the tax years in question, he worked during the day at the airport for the City of Philadelphia. He maintained that he was able to also work as an interpreter by using vacation or other leave time.

Conclusions of Law

The Philadelphia Code Chapter 19-2601 for the Business Privilege Tax allows a taxpayer to allocate receipts earned outside of Philadelphia and to exclude them from taxable receipts.

Petitioner testified at the hearing that he spent half his work time as an interpreter outside of Philadelphia but provided nothing to substantiate his claim. He did not maintain any record of his work locations. See Notes of Testimony, page, 7.

In addition, while the Petitioner showed the Board some of the tax returns prepared by his accountant, he did not provide any documentation to substantiate expenses that he told the Board he wanted to claim as deductions. Specifically, the Petitioner testified that he has a home office but provided no proof of any related expenses.

He was unsure if the taxes shown as due on the returns were before or after any of these deductions that he talked about.

The burden of proof belongs to the Petitioner to establish by substantial evidence that the tax assessment is incorrect. Ernest Renda Construction Co.,Inc. v. Commonwealth, 94 Pa. Commonwealth Ct. 608, 504 A. 2d 1349 (1986).

Petitioner failed to meet this burden of proof. He did not provide documentation or demonstrative evidence sufficient to show the Board what expenses, if any, should be allowable deductions and that he spent a portion of his time working outside of Philadelphia.

The Board abated one half of the interest and one half of the penalties. In determining whether the Petitioner met the standard of good faith, and failure to act with negligence or intent to defraud the City as stated in the Philadelphia Code Chapter 19-1705, the Board took into account the Petitioner's testimony that he tried on several occasions to obtain a Business Privilege Tax and was turned away. This made it difficult to file the necessary tax returns on a timely basis.

Concurred:

Monique Delapenha, Esq., Chair
T. David Williams, Esq.
Joseph Ferla
Lavon Wells-Chancy, CPA
Mary Mason