

May 1, 2009

In Re: John A. Dawkins III

Docket Nos: 36NPMERZZ9384

36WMMERZZ9487

36BPMERZZ8625

STATEMENT OF RECORD:

1. John A. Dawkins, III (hereafter "Petitioner") filed a petition for review of Net Profits Tax, Business Privilege Tax and Wage Tax assessments that arose from an audit by the Philadelphia Department of Revenue ("Revenue") that took place in 2003 and 2004. The Petition was filed with the Tax Review Board on March 24, 2008.
2. A public hearing was held before the Tax Review Board on August 12, 2008. At that hearing, the City objected to the Board's jurisdiction in this matter based on its position that the petition for review was untimely filed.
The Board continued the matter and requested briefs from each party on 2 issues:
 - a. Whether the Tax review Board had jurisdiction to hear the matter since a suit filed by the City for the taxes on the Tax Review Board petition was pending in the Philadelphia Court of Common Pleas; and
 - b. Based on the scenarios as described in each Counsel's opening statement, when, in their opinion, did the time period to appeal to the Tax Review Board begin?
3. There was no testimony or other evidence presented at this hearing.
4. At the request of the City, a second hearing was held on November 6, 2008 to allow the City to present recently discovered evidence on the issue of whether the Tax Review Board petition was filed timely. Following this hearing, the Board once again took the matter under advisement.
5. The Board announced its decision on December 9, 2008 to deny the petition based on lack of jurisdiction due to the untimely filing of the petition. It was the finding of the Tax review Board that the petition was filed beyond the 60 day requirement imposed by The Philadelphia Code Chapter 19-1702
6. Petitioner has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. The Stipulation of Facts signed by the parties on November 19, 2008 is hereby incorporated by reference.
2. The Petition for Appeal filed with the Tax Review Board requested review of the assessment for
 - a. Business Privilege Tax for the years 2000 to 2002, 2004 and 2005 with tax principle of \$133,264.13, and as of the November 6, 2008 Tax Review Board hearing date, interest due of \$93,616.91 and penalty due of \$136,038.31, for a total due of \$332,919.35; and
 - b. Net Profits Tax for the period January 1, 2006 through June 30, 2006 with tax principle due of \$745.67, and as of the November 6, 2008 Tax Review Board hearing date, interest due of \$208.80 and penalty due of \$372.83, for a total due of \$1,327.30; and
 - c. Wage Tax with nothing due.
3. Petitioner is the owner of several McDonald's restaurants, both inside and outside of Philadelphia.

4. An audit by the City of Philadelphia was conducted in late 2003 and early 2004 with a completion date of June 9, 2004.
5. At the completion of the audit, the auditor, Ms. Cephus, prepared and sent a final audit notice with amounts being assessed as a result of the audit and with information as to appeal rights to the Tax Review Board. At the August 12, 2008 Tax Review Board hearing, the City was able to show the fax confirmation for this information dated June 10, 2004.
6. The City's records show that a bill was sent on July 30, 2004 and that through the course of the next 3 years, 20 more bills were sent to Petitioner at the correct business address.
7. Christen Latini, tax analyst for the City of Philadelphia, testified at the November 6, 2008 hearing. The current case was part of her case load. She identified an "Intent to Sue" letter that she drafted and addressed to Petitioner dated April 10, 2006 and a delinquent tax bill prepared to accompany the letter. Ms. Latini signed the final letter to be sent to Petitioner with the bill and sent the letter. The copy she identified at the hearing was printed from the City of Philadelphia case management system. Ms. Latini testified that she entered the letter into the system at the time it was prepared and sent.
8. The Notice of Intent letter and accompanying bill were sent by the usual City of Philadelphia mail process to 111 Presidential Boulevard, Suite 153 Bala Cynwyd, Pa. 19004-105, an address verified by the testimony of Petitioner's wife and administrative assistant, Barbara Dawkins, as the correct business address for Petitioner. Ms. Latini prepared the letter and envelope and then delivered the addressed envelope with her name on the return address information to the office mail room. In addition, there were no notations in the City's records or in Ms. Latini's file that the letter and bill were returned as undelivered.
9. Ms. Latini testified that after sending out that letter, she spoke by phone to Mrs. Dawkins specifically about the bill. A note entered into the case management system (hereafter "4d") by Ms. Latini indicates that this telephone communication was on or around May 15, 2006 and that Mrs. Dawkins was disputing the tax assessment under appeal in this matter.
10. On August 24, 2007, Ms. Latini referred the case to her supervisor as ripe for the filing of a lawsuit.
11. Following a promotion in September 2007 that added the drafting of complaints to her job responsibilities, Ms. Latini received this case for that purpose.
12. Ms. Latini testified and her 4d notes corroborate that on or about October 9 and 11, 2007, Ms. Latini attempted further telephone contact with Mrs. Dawkins and Mrs. Dawkins made a return call to her, but they were unsuccessful in reaching each other.
13. Petitioner testified that he did not make any attempts between June 2004 and the February 2008 Court of Common Pleas filing by the City of Philadelphia to determine the status of the audit or ask about a final notice or bill.

CONCLUSIONS OF LAW:

Petitioner failed to meet his burden of proof to establish that the Tax Review Board petition was filed in a timely manner within the requirements of The Philadelphia Code Chapter 19-1702 which states that “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...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 facts of this case establish that Petitioner and his representatives, both accountant and attorney, participated in various stages of the audit process and exit conference. They were aware of the final audit determination and informed of the appeal process in 2004.

Both Mr. and Mrs. Dawkins confirmed the mailing address in the City’s records was correct.

The City provided a fax confirmation from the auditor with the final assessment figures and appeal information. A bill was sent on or about June 30, 2004 from which Petitioner would have had 60 days to file a Tax review Board petition.

The City computer system (TIPS) and the Law Department case management system (4d) noted multiple bills and notifications to the Petitioner at the correct address with no notations of any returned mail. In addition, there was testimony as to a phone conversation between Mrs. Dawkins and Ms. Latini of the City’s Law Department specifically related to a bill and notice sent about the delinquencies at issue on the Tax Review Board petition.

Petitioner admitted that he did not approach the City Law Department or Revenue Department between the June 2004 exit conference and the Court of Common Pleas filing in February 2008 for collection of these taxes.

Petitioner and his representatives were well aware that the final audit assessment had been made and were well aware of their appeal rights in 2004. There was ample opportunity to file a Tax Review Board petition. Even if Petitioner could credibly assert that he did not receive the June 30, 2004 bill or did not receive all of the more than 20 bills or notices noted in the City’s records, Petitioner did not convince the Board that he was never notified or on notice as to these specific tax delinquencies and the administrative appeal process available to him for review of these assessments.

The City’s records show that multiple notices of the tax delinquency were generated and sent to the Petitioner at their business address. The Tax Review Board is permitted to rely on the regular business processes and records of the City of Philadelphia as sufficient proof that Petitioner received sufficient notice to of both the assessments and the appeal process with ample time to avail himself of administrative review prior to the City’s Court of Common Pleas action for these matters.

Concurred:

Monique DeLapenha, Esq., Chair
LaVon Wells-Chancy, CPA
Joseph Ferla
Beatrice Turner

Dissented:

David Williams, Esq.