

January 14, 2010

**In Re; J.P. Cerini Technologies, Inc.**  
**Docket Nos: 36BPINPZZ7724**  
**36WMINPZZ9290**

STATEMENT OF RECORD:

1. J. P. Cerini Technologies, Inc. (hereafter "Petitioner") filed petitions for appeal with the Tax Review Board ("TRB") on August 20, 2008 for abatement of interest and penalties accrued against Wage Tax and Business Privilege Tax liabilities.
2. A public hearing before the TRB was scheduled for December 9, 2008 and continued at Petitioner's request.
3. A public hearing before the TRB was scheduled for May 9, 2009 and continued at Petitioner's request.
4. A public hearing before the TRB was held on August 4, 2009. At the conclusion of the hearing, the TRB announced its decision to abate a total of \$29,000.00 in accrued penalties as follows:  
For the docket number 36BPINPZZ7724, pertaining to the Business Privilege Tax, \$22,717.00 was abated;  
For the docket number 2  
36WMINPZZ9290, pertaining to the Wage Tax, \$6283.00 in accrued penalties was abated. All abatements were contingent on Petitioner entering into a payment agreement within 90 days.
5. Petitioner has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner filed 2 TRB Petitions for Appeal, one for Wage Tax and one for Business Privilege Tax, each one marked as a petition for appeal of interest and penalties. Petitioner did not file petitions for review of the tax principal.
2. At the TRB hearing on August 4, 2009, the following assessments were considered:  
Business Privilege Tax (BPT) for the years 1997, 2001 through 2006 with tax principal of \$15,190.01, interest of \$13,838.81 and penalty of \$22,713.06 for a total due of \$51,745.00.  
Wage Tax for the years 1999, 2000 and 2004 with tax principal of \$8,583.10, interest of \$9,218.48 and penalty of \$12,810.56 for a total due of \$30,612.14.
3. At the hearing before the TRB, Petitioner was represented by Anthony Parenti, CPA. Mr. Parenti was not Petitioner's accountant for the years under appeal. Mr. Parenti acknowledged that he was working from paperwork provided by Petitioner and reconstructed documents to determine if and when certain tax returns had been filed that the City Department of Revenue did not have record of having received as filed timely for the tax years in question.  
There were many questions as to when some of the tax returns had been originally filed. Mr. Parenti did not have first hand knowledge of this information since he was not the company accountant at the time. He could only testify with certainty as to the documents he had submitted.  
Petitioner was in arrears for various taxes due to business problems during the 1990s and acknowledged that some of the delinquencies were not in dispute.
4. Petitioner was primarily questioning the 1997 BPT and the Wage Tax for the years 1999 and 2000 because they believed the returns were filed on time, some or all of the taxes were paid, and any collection efforts by the City for these years were beyond the statute of limitations.
5. The City records did not reflect or confirm that the returns for those years were filed on time with all taxes remitted. The City records reflected these returns were marked as filed in 2007, when Mr. Parenti submitted tax returns that he contended were copies of what

had been filed when originally due or reconstructed returns of what had been filed when originally due. Petitioner's own records were incomplete or could not be located.

6. Petitioner did not have any evidence to support the assertions that the returns had been filed when due. The basis for their argument was that in 2006, Petitioner entered into a settlement agreement for delinquent taxes for prior years back to 1998, and if the Wage Tax for 1999 and 2000 as well as the BPT for 1997 were outstanding, the City would have included those tax years in the settlement at that time. Therefore, to hold Petitioner liable for the tax principal, interest or penalties would result in at least some double payment by Petitioner. There was no corroboration for these assertions, either by testimony or documentation.
7. Both parties acknowledged that they had been diligently working together to piece together both the City's information and Petitioner's documents, and while they had been able to resolve certain other outstanding items, they could not find the needed documentation to amicably resolve these outstanding delinquencies. The City's records and computer files did not contain information to substantiate Petitioner's claims that the returns had been filed when originally due.

#### CONCLUSIONS OF LAW:

Petitioner, as the moving party, bears the burden of proof to establish by substantial evidence that the assessments it is challenging are in error. Estate of Kuljian v. Philadelphia Tax Review Board, 111 Pa. Cmwlth 451, 533 A.2d 1135 (1987). Petitioner was unable to provide by testimony or documentation the substantial evidence needed to establish to the Tax Review Board that tax returns had been filed for the BPT for 1997 and the Wage Tax for 1999 and 2000, and that the taxes due based on those returns had been remitted. Petitioner's accountant, Mr. Parenti, acknowledged that through the years in question Petitioner had run into financial difficulties and fallen into arrears on a variety of its tax obligations to the City, although it had made attempts to come into compliance, most notably with the 2006 settlement agreement. He also acknowledged that Petitioner's own files were incomplete. Petitioner did not provide any records to show that returns had been filed in 1997, 1999 or 2000 and what payments were made for the taxes due based on those returns. Conjecture and suppositions as to what might have happened or should have happened are insufficient proof.

The Tax Review Board has the authority to "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." The Philadelphia Code Chapter 19-1705(2).

Both Petitioner and the City provided information as to the efforts being made to address the missing tax returns and delinquencies. Petitioner acknowledged that it fell into arrears on its tax obligations, but that these delinquencies did not occur as a result of any intention to defraud the City; rather they were the result of a downturn in business activity. In addition, as business improved, Petitioner made a good faith effort to work with the City representatives to address both the missing returns and the tax delinquencies. At the TRB hearing, Petitioner's representatives stated that they were prepared to pay the principal amount due on the tax delinquencies.

Therefore the decision of the Tax Review Board was to abate \$29,000 of the accrued penalties.

Concurred:

T. David William, Esq.

Joseph Ferla

LaVon Wells-Chancy