

March 15, 2010

In Re: Michael Muhammad
Docket Nos.36BPMERZZ8713
36NPTMERZZ9004

STATEMENT OF RECORD:

1. Michael Muhammad (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) requesting review of a Business Privilege Tax assessment for the years January 2000 through December 2006, and a Net Profits Tax assessment for the years 1997, 1999, and 2001 through 2005.
2. A public hearing before the TRB was scheduled for November 6, 2007 and continued at the request of the City of Philadelphia Law Department for review.
3. A public hearing was held before the Tax Review Board on February 19, 2009. At that hearing, Petitioner withdrew his request for review of the Net Profits Tax assessment listed as docket number 36NPTMERZZ9004. At the conclusion of the public hearing, the TRB announced its decision to abate 50% of the penalty accrued against the Business Privilege Tax assessment contingent on Petitioner entering into a payment agreement for the balance due within 90 days.
4. Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner owned and operated a business called AM Painting for all tax years under review. For most years in question, Petitioner operated the business as a sole proprietor. At some point the business became an LLC.
2. Petitioner attended the hearing with an employee, Frank Prillerman, who read a statement on Petitioner's behalf and provided most of the testimony.
3. Petitioner withdrew his appeal of the entire Net Profits Tax assessment at the hearing and agreed that he owed it.
4. The Business Privilege Tax under appeal to the TRB was for the years 2000, and 2002 through 2005. The principal amount due was \$18,982.73, with interest of \$10,338.98 and penalties of \$17,462.40 as of the hearing date, for a total due of \$46,784.11.
5. Petitioner operating a painting business, employing anywhere from 7 to 15 individuals depending on the available business opportunities.
6. For the years under appeal, Petitioner did not employ a bookkeeper or accountant, did not have a bookkeeping system, and did file tax returns to the federal, state or city governments.
7. In 2006, Petitioner filed the required tax returns to the City of Philadelphia. Since 2006, he has filed the required tax returns. Petitioner did not deny that the taxes were due or that the assessment figures were in error.
8. Petitioner requested that the TRB abate all taxes, interest and penalties in consideration of Petitioner's employment of neighborhood residents, many of whom were ex-offenders. Petitioner requested the TRB to also consider that his was a minority owned business and employed men who are minorities. Petitioner requested the TRB to consider his business as a community service that had operated "underground" so that it could pay salaries to its employees and continue to operate and provide jobs.

CONCLUSIONS OF LAW:

Pursuant to The Philadelphia Code Chapter 19-2603 “a tax is hereby imposed upon every person engaging in any business in the City of Philadelphia beginning with the tax year 1985, and annually thereafter.”

The term “Business” is defined as the “(c)arrying on or exercising for gain or profit within a city of the first class, any trade, business, including financial business as hereinafter defined, profession, vocation or commercial activity, including the partial or complete liquidation or sale of business assets, or making sales to persons within such city of the first class.” The Philadelphia Code Chapter 19-2601.

Petitioner conceded that his business activity falls within the scope of the Business Privilege Tax and the TRB agrees. Petitioner and Mr. Prillerman testified that AM Painting, Petitioner’s business, operated in the City of Philadelphia and earned revenues during all the tax years under review and Petitioner should have been filing tax returns and remitting the BPT from the inception of his business activity.

The tax assessments before the TRB were based on Petitioner’s own tax returns that were finally filed in 2006 so there was no question before the TRB as to whether the tax principal amounts are correct.

Petitioner had already begun to make payments to satisfy the Net Profits Tax liability at the time of the TRB hearing.

Petitioner requested abatement of all principal, interest and penalties using a social policy argument. He requested that the TRB forgive his tax responsibilities because he was doing something good for the community that the government should recognize and reward.

It is beyond the authority and jurisdiction of the Tax Review Board to determine social and tax policy for the city of Philadelphia. The purview of the Board is to review evidence when presented to determine whether a tax assessment is incorrect based on applicable ordinances and regulations, and to review requests for interest and penalty waivers using the standards set forth in The Philadelphia Code Chapter 19-1705 providing for abatement of interest and penalties where the taxpayer has demonstrated that he has acted in good faith and without negligence or intent to defraud the city.

Through the Mayor and City Council, the City has, in fact, made social policy determinations to support and provide tax relief for businesses that are employing ex-offenders or providing other benefits that the City deems valuable.

One example is in the Business Privilege Tax ordinance itself. The Philadelphia Code Chapter 19-2604 provides certain tax credits for businesses that are creating new jobs and specifically includes a provision covering jobs for ex-offenders.

Petitioner may have been eligible for this tax relief, had he chosen to come forward to the city, right from the start of his business and may still be eligible even today. That responsibility lies with him to explore with the Department of Revenue what tax responsibilities he has as a small business owner and what opportunities the city provides to businesses. Petitioner himself

mentioned that his business is located within a Keystone Opportunity Zone and that may provide some tax advantages that he was unaware of at the start of his business activity.

Petitioner chose to not hire an accountant or seek professional advice that may have helped him to find out about the various programs the city offers for businesses such as his.

Petitioner's business may have been a great source of support and help for the people he employed but that alone does not relieve him from the requirement to comply with the tax requirements of the City.

Petitioner has come forward and is making an effort to come into tax compliance with the City. Therefore the decision of the Tax Review Board was to abate 50% of the penalty and to provide 90 days for Petitioner to enter into a payment agreement for the balance.

Concurred:

T. David Williams, Esquire
LaVon Wells-Chancy, CPA
Beatrice Turner

(7) *Credit for New Job Creation.* 357

(a) *Definitions.* For purposes of this subsection, the following definitions shall apply.

(1) *Base Period.* The three years preceding the date on which a business may begin creating new jobs which may be eligible for job creation tax credits.

(2) *Job Creation Tax Credits.* Tax credits for which the City of Philadelphia's Revenue Department has issued a certificate under this Chapter.

(3) *New Job.* A full-time job, the average hourly rate, excluding benefits, for which must be at least 150% of the federal minimum wage, created within the City and County of Philadelphia by a company within five (5) years from the start date. Employment opportunities for ex-offenders must be contracted for a minimum period of at least 180 days. 358

(4) *Start Date.* The date on which a business may begin creating new jobs which may be eligible for job creation tax credits.

(5) *Year One.* A one-year period immediately following the start date.

(6) *Year Two.* A one-year period immediately following the end of year one.

(7) *Year Three.* A one-year period immediately following the end of year two.

(8) *Year Four.* A one-year period immediately following the end of year three.

(9) *Year Five.* A one-year period immediately following the end of year four.

(10) *Ex-offender.* A person previously convicted of a felony, or who was incarcerated for any conviction, or who is currently on probation or parole for any conviction. 359

(b) *Eligibility.* In order to be eligible to receive Job Creation Tax Credits, a business must demonstrate the following:

(1) A current Job Creation Tax Credit Certificate from the Commonwealth of Pennsylvania for jobs located in the City of Philadelphia or each of the following:

(i) The ability to create the number of jobs required by the Revenue Department within five (5) years from the start date.

(ii) Financial stability and the project's financial viability.

(iii) The intent to maintain operations in the City of Philadelphia for a period of five (5) years from the date the company submits its Tax Credit Certificate to the Department of Revenue.

(iv) An affirmation that the decision to expand or locate in the City of Philadelphia was due in large part to the availability of a Job Creation Tax Credit.

(c) *Application Process.*