14-15

July 7, 2014

In Re: Nature Soy – supplemental opinion on remand

Docket No: 35WRMERZW7044

STATEMENT OF RECORD:

1. Fenjin He, Vice-President of Nature Soy, Inc. (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board on October 3, 2011 requesting review of a water/sewer bill for the property located at 912-24 Brown St. Philadelphia, Pa.
2. A public hearing was held before the Tax Review Board on January 26, 2012 and continued for the Water Revenue Bureau to provide information as to the status and condition of the meter that had been removed from the property.
3. A public hearing was held on April 26, 2012 following which the case was taken under advisement with the parties directed to meet within 15 days for settlement discussions, after which the Board would make a decision if no agreement was reached.
4. Having received no information from the parties that a settlement had been agreed to, on June 19, 2012, the Board issued its decision to adjust the principal amount due and reduce it to $14,000 with Petitioner to make payment arrangements within 120 days of the date of the adjusted bill.
5. The City of Philadelphia Water Revenue Bureau (WRB) filed a timely appeal to the Philadelphia Court of Common Pleas.
6. The matter was remanded from the Court of Common Pleas by Order dated April 9, 2013 with instructions to the TRB to clarify the portion of its decision that reduced its finding of liability for water usage of $28,000 to $14,000.
7. The Tax Review Board held a public hearing on June 4, 2013 to comply with remand from the Court of Common Pleas. Following legal argument and discussion, the Board took the matter under advisement. The Board announced its decision on July 16, 2013 to reaffirm the decision issued on June 19, 2012 in this matter.
8. The City of Philadelphia has filed an appeal to the Court of Common Pleas.
9. This supplemental Opinion provides additional findings and conclusions as a result of the remand and April 9, 2013 hearing.

FINDINGINGS OF FACT:

1. The Tax Review Board incorporates by reference the facts as stated in its opinion of December 7, 2012 in the matter of Nature Soy.
2. The sole responsibility for any error rested with the City.
3. The City did not provide sufficient evidence to establish that the water meter and water register did not match as to size and therefore Petitioner's water usage had been underreported by the devices for more than 10 years.
4. Petitioner and the TRB were presented only with the fait accompli recalculation of Petitioner's water bill going back 10 years with an additional amount due of $148,000.

5. The meter and register had never been made available to Petitioner for any independent review and testing. The Water Department did not test the devices.
6. The bill was estimated using a 10 year old chart from the meter manufacturer with no consideration or deviations to account for Petitioner's actual circumstances or evidence of actual water usage needs.
7. The City acknowledged that it bore at least some responsibility for an equipment error such as the mis-match it claimed occurred in this situation.
8. There was no way Petitioner could have discovered any such equipment error on its own.

CONCLUSIONS OF LAW:

The Tax Review Board hereby incorporates by reference the Conclusions of Law stated in its opinion of December 7, 2012 in the matter of Nature Soy.

In addition, at the conclusion of the remand hearing on June 4, 2013, it was the finding of the Tax Review Board that the Water Revenue Bureau did not provide sufficient proof to establish that the meter and register operating at Petitioner's property from 2000 to 2010, the petition period, was in fact defective or mismatched. The meter was never made available to Petitioner nor was any testing or documentation provided to Petitioner or to the TRB, other than the testimony of the WRB representatives testifying from information and notes in the city's database records.

At the time the Water Department made a determination of a mismatch between the register and the meter at Petitioner's property, Petitioner was not notified, the Department did not preserve any physical evidence and there was a bare minimum of documentation. There was no documentation to show that the City had done any testing on its own with any results to be shown to petitioner or the TRB.

Nonetheless, Petitioner, who had faithfully relied on the city's own meter and equipment and paid every bill sent to him, took the City representatives at their word that indeed some kind of meter-register mismatch had occurred and did his own thorough analysis of the water usage at his property. The Water Department did no such thing. It used a decade old standard usage calculation chart and did a straight line hypothetical calculation using the most current reading from Petitioner's property, with no accounting for usage fluctuation, Petitioner's business operations or business growth. The Water Revenue Bureau then sent Petitioner a bill for $148,000 with no explanation. It was left to Petitioner to pro-actively seek information as to the origin of this bill, only to be told that the meter and register were no longer available for inspection or testing, but that he should accept on faith that a bill for $148,000 was correct because the Department said it was right, when for the previous 10 years the Department said the bills he had been receiving and paying were also right.

At the first TRB hearings, the city's representative admitted that mistakes had been made by the City and therefore the City would be amenable to a compromise that would have the city share some of the burden of the delinquency bill.

As stated by TRB Chair Nancy Kammerdeiner at the hearing on July 16, 2013, the Board "accepted the City's acknowledgement that there were errors on its part and their offer to share responsibility ...As far as we were concerned this indication of the shared responsibility was not affected by the dollar value of the excess usage. And so once we determined which calculation of excess usage we were going to support, we then applied the shared responsibility to that revised amount." See N.T. July 16, 2013, pages 3 & 4.

The jurisdiction of the Tax Review Board in these matters, as set forth in The Philadelphia Code Chapter 19-1700 et seq is broad and provides the Board with latitude to act in an equitable manner when reviewing appeals.

Therefore, after further review and deliberation , the decision of the Tax Review Board was to reaffirm its decision of May 24, 2012 as follows: For the period 5/22/2000 to 10/16/2010, usage charge to be adjusted to $14,000; must make payment arrangements within 120 days of the date of the adjusted bill.

Concurred:
Nancy Kammerdeiner, Chair
Christian DiCicco, Esq.
Joseph Ferla
George Mathew, CPA
Milton Oates