

July 19, 2004

**IN RE: ANDY'S 25 HOUR TOWING**  
**DOCKET NOS: 36BPINPZZ8661**  
**36WMINPZZ9577**

**STATEMENT OF RECORD:**

1. Andy's 25 Hour Towing, Inc. (hereafter "Petitioner") filed a petition with the Tax Review Board on February 12, 2003 to contest delinquent tax billings for the Business Privilege Tax and the Wage Tax for the years 1998 through 2000.
2. A public hearing before the Tax Review Board scheduled for April 24, 2003 was continued at the request of Stacy Ip, Assistant City Solicitor representing the Philadelphia Department of Revenue, based on her representation that Petitioner's representative had agreed to supply documents to the City for review that might lead to a settlement of the matter.
3. A public hearing scheduled for June 12, 2003 was continued at the request of Stacy Ip, Assistant City Solicitor, due to a scheduling conflict.
4. A public hearing scheduled for August 14, 2003 was continued at the request of counsel for Petitioner, due to a scheduling conflict.
5. At a public hearing on November 13, 2003, the matter was continued to provide Petitioner sixty (60) days to produce documentation.
6. A public hearing was held on January 15, 2004 before the Tax Review Board. The decision of the Tax Review Board was to deny the petition.
7. Petitioner has appealed to the Philadelphia Court of Common Pleas.

**FINDINGS OF FACT:**

1. Petitioner was called for an audit by the Philadelphia Department of Revenue.
2. At the audit, Petitioner agreed to provide certain additional documentation to the auditor so that the audit could be completed.
3. Petitioner failed to provide any such additional documentation.
4. The City auditor, Richard Borio, issued an estimated assessment based on the limited documentation and information provided at the audit.
5. The audit assessment presented at the Tax Review Board hearing was as follows:
  - Business Privilege Tax for 1998 through 2000 in the amount of \$15,000 tax principal, with interest of \$8550.66 and penalty of \$12,938.53 calculated as of the hearing date of January 15, 2004;
  - Wage Tax for 1998 through 2000 in the amount of \$15,000 tax principal, with interest of \$7050 and penalty of \$11,062.50, also calculated as of the hearing date.
6. In response to the audit bill, Petitioner filed a Tax Review Board petition for review of the assessment.
7. The Tax Review Board hearing on January 15, 2004 was the fifth listing of this matter. Continuances were granted for two of the listings due to scheduling conflicts of counsel on both sides. The other two continuances, that for the April 24, 2003 hearing and for the November 13, 2003 hearing were specifically granted based on assertions and promises by counsel for the petitioner, James Hubbard, Esquire, that he would provide certain documents to the City's attorney. Both sides and the Board agreed that these documents were needed to allow for the proper preparation for an evidentiary hearing before the Board. The Board directed Mr. Hubbard to produce the documents and he agreed to do so.

8. At the January 15, 2004, the Board was once again told that the documents had not been provided. Mr. Hubbard acknowledged that the documents he had agreed to provide had not been forthcoming prior to the hearing and that he did not have them even at the hearing itself.
9. Mr. Hubbard stated that while he had brought some paperwork with him, he needed more time to get the additional documentation from his client.  
Mr. Hubbard requested a ten (10) day extension from the Board.
10. The Board denied Mr. Hubbard's request for a ten (10) day continuance.
11. Chairman Derrick Johnson advised the parties that the Board would proceed with the hearing. Mr. Hubbard was asked to present his case for the Board's consideration.  
Mr. Hubbard stated that he was unprepared and unable to proceed because he did not have the documentation necessary to establish his client's position that the audit bill was incorrect.
12. The hearing was then ended.

#### CONCLUSIONS OF LAW:

Petitioner failed to meet its burden of proof to show by substantial evidence, or any evidence at all, that the audit bill issued by the Department of Revenue was incorrect. Petitioner did not provide any evidence by either testimony or documentation to refute the assessment entered into the record by the City.

Petitioner filed its Tax Review Board petition on February 12, 2003 to challenge the audit assessment. The final hearing was January 15, 2004.

Despite ample notice and several opportunities to put forth its position at a hearing, Petitioner's repeated requests to be allowed time to produce documents for the Department of Revenue were granted. The Board waited almost one (1) year for the petitioner to follow through on these promises. Petitioner failed to provide even minimal evidence despite being afforded numerous opportunities by the Board.

As the moving party, it is the petitioner's burden to show that the bill in question is incorrect and/or that the petitioner is entitled to any abatement of accrued interest and penalty. The presentation by the City of the assessments is sufficient as prima facie proof of their accuracy. The burden then shifts to the petitioning party to present evidence to establish that the assessment is incorrect. City of Philadelphia v. Litvin, 235 A.2d 157 (Pa. Super 1967).

When the Board convened on January 15, 2004, it once again was met with Petitioner's attorney requesting still more time to comply and to produce documents. It was the decision of the Board that Petitioner had been given ample leeway and opportunity to compile its documentation and prepare for either additional auditing by the Department of Revenue or the Tax Review Board hearing. Petitioner was prepared for neither one.

Therefore the decision of the Tax Review Board was to deny the petition of Andy's 25 Hour Towing, Inc.

Concurred:

Derrick Johnson, CPA, Chairman

Christopher Booth, Jr.

Una Vee Bruce

Joseph Ferla