

5/25/2006

Philadelphia Fresh Food Terminal Corporation

Business Use & Occupancy tax refund for 2000 and 2001

Refund request was filed with Revenue Dept. in January 2005.

Refund denied by Dept. as beyond 3-year statute of limitations for refund requests.

-Petitioner argues that its refund request is pursuant to relief granted Nunc Pro Tunc by the BRT which in Dec. 2004 granted Petitioner's request to reduce the assessed value of the property for the years 2000 and 2001. This reduction by the BRT created the 2000 and 2001 overpayments that Petitioner is requesting. The taxes being requested as a refund were paid timely when due in 2000 and 2001 and were based on the property's assessed value at that time. Therefore petitioner's request for a refund is beyond 3 years from the dates of payment.

Petitioner argues that the Nunc Pro Tunc relief granted by the BRT created the overpayment in 2004 and an entitlement to the refund. It claims that the due dates for the taxes changed to the date on which the BRT granted Petitioner's request to reduce the assessment, thus creating the overpayment.

The Revenue Dept., not the BRT, bills and collects the taxes using the assessed value provided by the BRT. The Dept. also is responsible for providing refunds. The Phila. Code §19-1703 which governs refunds, only references the Revenue Dept. and grants the authority to authorize refunds to the dept. This section of the Code states that petitions for refund "shall be filed with the Department within 3 years from the date of payment to the City or School District of Philadelphia or the due date, whichever is later."

The primary issue is whether the action by the BRT changes the due date for the tax remittance.

Petitioner argues that the U&O Tax could not have been due when originally paid in 2000 and 2001, prior to the BRT's 2004 decision. But of course it was due at that time and all parties would have agreed that the taxes would have been considered delinquent in 2002 and 2003 if payments had not been received for the prior years now under appeal.

The real question is does the statute of limitations for a refund reset because of the BRT decision.

While the BRT has the authority to grant such a petition Nunc Pro Tunc and recalculate the assessed value of a property, the BRT does not bill, collect or refund any taxes. The Revenue Dept. may operate under totally different Code sections, regulations and standards. This doesn't nullify the BRT decision (as the Petitioner would argue) because the BRT reduced value still is valid and may be useful to the property owner for a variety of reasons.

The BRT does not decide for the Revenue Dept. that a taxpayer should receive a refund of either real estate or U&O taxes.

Petitioner relies on the case of The Mononghela Connecting Railroad Co. v. City of Pittsburgh to support its position that the right to a refund of taxes vests on the date the assessment is reduced. This case involved the statutory interpretation of when interest on a tax refund is to be calculated. It did not discuss the statute of limitations issue as pertinent to the TRB issue.

The case of Daimler-Chrysler Corp. v. Commonwealth of Pa. is more analogous to the current set of circumstances in that it involved the filing of a request for refund of certain sales taxes where the refund request was filed beyond the 3 year statute of limitations because the right to the refund did not come into existence until after 3 years from the payment of the sales taxes had passed. The Commonwealth Court, citing the U.S. Supreme Court, stated that statutes of limitations “(a)re by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the voidable and unavoidable delay.” The Court continued that they “represent a public policy about the privilege to litigate.” Because statutory periods are in some sense arbitrary, the period to initiate suit occasionally expires before a claimant has sustained injury.” Giving a party a reasonable time to be heard and a reasonable right of access is sufficient.

The BRT ordinance does not have any provision that extends or abrogates the statute of limitations provisions of The Philadelphia Code Chapter 19-1703. And all parties agree that the petition was filed beyond three years from the payment dates. The question for the Board is whether the BRT reassessment moved the due date of the taxes to 2004. I don't think there is any real foundation for this assertion.

The City also raises a settlement agreement for real estate taxes for the year 2001 as a bar to the current refund request. This settlement provides that the Petitioner will not, among other things, seek any reassessments or refunds in exchange for certain considerations by the city. However all documentation presented by the City refers specifically to real estate taxes and not to the U&O Tax. So if the Petitioner violated a prior agreement with the City, it does not appear to have any effect on the U&O tax other than to make the point that if they had not breached the agreement by seeking the reassessment, there would be no basis for any refund request for the U&O tax paid.

November 29, 2006

IN RE: PHILADELPHIA FRESH FOOD TERMINAL CORPORATION
DOCKET NO: 36UOREFZZ9864

STATEMENT OF RECORD:

1. Philadelphia Fresh Food Terminal Corporation (hereafter "Petitioner") filed a Petition for Refund Appeal with the Tax Review Board on April 29, 2005. Petitioner requested a review of a denial by the Philadelphia Department of Revenue of Petitioner's refund request for Realty Use and Occupancy Tax for the years 2000 and 2001.
2. A public hearing was held before the Tax Review Board on November 22, 2005. At the conclusion of the hearing, the matter was taken under advisement and a briefing schedule determined for both parties.
3. The decision of the Tax Review Board was announced on July 18, 2006 to grant Petitioner's request for a refund.
4. The City of Philadelphia appealed to the Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner was a tenant in the property at 3301 South Galloway St. Philadelphia, Pa. for all tax years in question, responsible for the payment of Use and Occupancy Taxes to the City of Philadelphia.
2. As per its leasing agreement, Petitioner was also responsible to pay the Real Estate Taxes on this property as well.
3. In 2000 and 2001, Petitioner paid the Use and Occupancy Taxes as they came due, based on the assessed value of the property at that time, as determined by the City of Philadelphia Board of Revision of Taxes (BRT).
4. In July 2002, pursuant to a Tax Review Board decision regarding the 2001 Real Estate Taxes for this property, Petitioner entered into an agreement with the City of Philadelphia Law Department that included, among other things, a waiver by Petitioner of the right to appeal the liabilities at issue and to seek any reassessments or refunds.
5. In October 2004, Petitioner filed a petition with the BRT to appeal nunc pro tunc the property's market and assessment values for the tax years 1997 through 2001. The decision of the BRT, on December 17, 2004, was to reduce the property's market value from \$6,000,000 to \$2,094,000. This decision resulted in a reduced Real Estate Tax assessment and a reduced Use and Occupancy assessment.
6. Following the BRT decision, Petitioner filed two separate petitions with the Philadelphia Department of Revenue. One petition sought a refund of overpaid Real Estate Taxes for the years 2000 and 2001. The other petition sought a refund of overpaid Use and Occupancy Taxes for the years 2000 and 2001. These petitions were filed in January 2005.
7. The refund petition for Use and Occupancy Tax was denied by the Department of Revenue. This denial was the basis for the petition for appeal before the Tax Review Board.
8. The Revenue Department's denial letter for the Use and Occupancy Tax refund appeal stated that the basis of the denial was the statute of limitations.
9. Petitioner filed a timely appeal of this denial with the Tax Review Board.

CONCLUSIONS OF LAW:

1. The City argues that Petitioner's petition should be dismissed because, according to the City's interpretation, under the settlement agreement signed on or about July 15, 2002 between

Petitioner and the City of Philadelphia, Petitioner waived its right to appeal to the BRT or TRB the liabilities associated with this petition for a refund of Use and Occupancy Taxes.

A review of the settlement letter showed that this settlement was specifically limited to the Real Estate Tax for the year 2001.

The City raised this settlement for Real Estate Taxes for the year 2001 as a bar to the current refund request. This settlement provides that the Petitioner will not, among other things, seek any reassessments or refunds in exchange for certain considerations by the City. However, all documentation presented by the City refers specifically to the Real Estate Tax and not to the Use and Occupancy Tax.

The decision of the TRB was that this settlement agreement did not pertain to the Use and Occupancy Tax petition before the Board. It was specifically limited to the Real Estate Tax for 2001 and therefore not relevant to this specific appeal. There was no testimony or documentation to establish that either party intended for the Realty Use & Occupancy Tax to be a part of this agreement at the time it was signed.

Therefore Petitioner is not barred from an appeal of the Use and Occupancy Tax for 2001 and 2002

2. Petitioner's refund request was beyond the statute of limitations in The Philadelphia Code Chapter 19-1703(1)(d), if not for the superceding BRT decision to retroactively reduce the assessment value of the property.

The City's second argument against Petitioner's refund request is that the request is barred by the statute of limitations that requires all refund requests to be made within 3 years of the payment or the due date of the tax. The Philadelphia Code Chapter 19-1703(1)(d).

Petitioner responded that the nunc pro tunc relief of the BRT essentially resets the due date of the tax since the new tax amount could not have been due prior to the BRT decision and therefore the January 2005 petitions for refunds were not barred by the statute of limitations because the due date for the new, reduced tax amount was on or after December 2004 date of the BRT decision to reduce the assessed and market values.

While it is not the responsibility of the BRT to assess and bill the Use and Occupancy Tax for the School District of Philadelphia, the assessment is based on the BRT determination of the property's value. Therefore the tax due can only be determined by the Revenue Department and then accurately billed to the correct party after the BRT has made its determination.

While the City focused on the statute of limitations as it relates to the Department of Revenue, the TRB believes that the correct focus is the role and purview of the BRT. While the BRT is not the responsible agency charged with billing and collection of taxes, it plays an integral role in the City's tax collection process. It provides the underlying basis for, in this case, the Use & Occupancy Tax collected by the City for use by the School District of Philadelphia.

The City would have the TRB reach the decision that a nunc pro tunc decision of the BRT has no meaning and is an exercise in futility.

The real question put to the Tax Review Board is what authority does that nunc pro tunc decision then carry with regard to other City agencies.

Pursuant to The Philadelphia Code Chapter 19-1806(4) the Realty Use and Occupancy Tax is “measured by the assessed value of the real estate... at the rate each year...per one hundred dollars (\$100) of the assessed value of the real estate as most recently returned by the Board of Revision of Taxes.”

The Department of Revenue’s billing is based on the assessment value provided to it by the BRT. When that assessment changes so does the amount of tax due. The tax paid by Petitioners in 2001 and 2002 was the tax due at the time based on the assessed value as returned by the Board of Revision of Taxes in those years.

When the BRT reduced the assessment on the property for 2001 and 2002, a new tax amount became due. Therefore, Petitioner’s refund request fits within the Code requirement of Chapter 19-1702 that the refund request be filed “within 3 years from the date of payment to the City or the School District of Philadelphia *or the due date, whichever is later.*” (emphasis added) The BRT decision occurred in December 2004 and Petitioner filed its refund request in January 2005, well within 3 years.

The City argues in its response brief (Page 9) that this result creates an open-ended refund opportunity for taxpayers. This is an overstatement since this type of refund opportunity only comes along when the BRT has undertaken to grant extraordinary relief pursuant to a nunc pro tunc appeal. And even then, the availability would still be subject to the 3 year limitation, from the new due date.

It is well settled that “where the amount of a refund is in issue and not the validity of the tax, the taxpayer’s money is not improperly detained until it is determined that the tax was incorrectly computed...”. Rittenhouse Plaza v. Tax Review Board and City of Philadelphia and and School District of Philadelphia, 694 A.2d 1170 (Pa. Cmwlth 1997). Petitioner could not have requested the refund at any earlier date since the decision had not yet been made that would have the Revenue Department recompute the tax and create the refund opportunity for Petitioner. That decision occurred on December 17, 2004.

Therefore, the decision of the Tax Review Board was to grant Petitioner’s refund request.

Concurred:
Derrick Johnson, Chair
Fran Fattah, Esquire
Una Vee Bruce
Joseph Ferla