

July 3, 2006

IN RE: VINCENT BOYLE
DOCKET NO: 36REINPZZ5511

STATEMENT OF RECORD:

1. Vincent Boyle (hereafter "petitioner") filed a Petition for Waiver of Interest and Penalty with the Tax Review Board on May 31, 2005.
2. A hearing was held before a Tax Review Board Master on September 15, 2005.
3. Petitioner requested and was granted a hearing before the full Tax Review Board.
4. On March 9, 2006, a hearing was held before the full Tax Review Board. AT the conclusion of this hearing, the Board announced its decision to abate $\frac{1}{4}$ of the interest and $\frac{1}{4}$ of the penalties.
5. The City of Philadelphia has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner owned the property at 550 Allengrove St. Philadelphia, Pa. during the years under appeal, 1997 through 2004. This property was a vacant lot.
2. Petitioner filed a petition for waiver of interest and penalty on May 31, 2005. Attached to the petition was a City of Philadelphia Delinquent Real Estate Tax Statement for the years 1997 through 2004. This statement showed principal due of \$8302.34, interest of \$543.74, penalty of \$2700.74, attorney fees of \$1761.98 and costs of \$160, for a total due of \$13,468.00.
3. Real Estate taxes went unpaid during those years because of Petitioner's financial hardship. He explained that his business was in poor financial shape for a variety of reasons including some miscommunications with the City of Philadelphia, and he was responsible for tuition for his son.
4. At the hearing, he testified that he had sold the property. At the settlement, all taxes, interest, penalties and other charges were deducted from the sale proceeds and paid to the city. Therefore, by the time of the hearing, petitioner was seeking a refund of the interest and penalties paid at the sale of the property.
5. At the Master's hearing held September 15, 2005, Petitioner had been advised to file a petition for refund with the Department of Revenue. He did so but had not had a response by the time of the full Board hearing.

CONCLUSIONS OF LAW:

Petitioner first filed a petition for waiver of interest and penalty. Pursuant to The Philadelphia Code Chapter 19-1705, the Tax Review Board has the authority to abate interest and penalties in whole or in part when "in the opinion of the Board the petitioner acted in good faith, without negligence and no intent to defraud."

Subsequently, all taxes, interest, penalties and other charges were paid so that by the time Petitioner was before the Board, he was seeking a refund of the interest and penalty rather than an abatement.

The Philadelphia Code Chapter 19-1703(7) provides the Board with jurisdiction to consider refund petitions for interest and penalty following a denial of a refund request by the Department of Revenue.

In this case, because the nature of Petitioner's request changed in the middle of the appeal process, he ended up before the Board prior to receiving a refund denial from the Department of Revenue.

The attorney for the City stated for the record that he was not at a disadvantage for lack of knowledge but objected to the Board proceeding on procedural grounds only since there had not been a decision by the Department of Revenue on the refund request by Petitioner.

However, a denial by the Department of Revenue would simply have resulted in Petitioner's having to make a return trip to the TRB. So in the interest of common sense and fairness, the TRB proceeded with the hearing.

Local Agency Law, 2 Pa. C.S. §501 et seq, provides for relaxed standards for the adjudication process in administrative hearings. In this case, all parties had notice and an opportunity to be heard. Basic due process was afforded to both sides. 2 Pa. C.S. §504. There was no disadvantage to the City in proceeding before the Board, as the City's attorney stated. See Notes of Testimony, Page 9.

Concurred:

Sharon Losier, Esquire, Chair
Joseph Ferla
Una Vee Bruce