

August 4, 2006

In Re: **William Crowthers**
Docket No: **36REINPZZ5745**

Statement of Record:

1. William Crowthers (hereafter "Petitioner") file a petition for waiver of interest and penalty with the Tax Review Board (hereafter "TRB" or "the Board") on February 28, 2005.
2. A public hearing before a Tax Review Board Master was held on October 13, 2005. The decision of the Master, as ratified by the Tax Review Board, was to abate the penalty, lien charge and $\frac{1}{4}$ of the interest.
3. The decision of the Master was appealed to the full Tax Review Board by the City of Philadelphia.
4. A public hearing was held before the Tax Review Board on March 9, 2006. The decision of the Tax Review Board was to abate all of the penalty and $\frac{1}{2}$ of the interest.
5. The City of Philadelphia has appealed to the Court of Common Pleas.

Findings of Fact:

1. Petitioner filed a Tax Review Board petition requesting abatement of interest and penalties and other charges accrued against Real Estate taxes for the tax years 1996 through 2004 for the property at 960 Allengrove St. Philadelphia, Pa. All taxes, interest, penalties and associated charges were paid as of the hearing date.
2. Petitioner testified that he inherited the property from his parents. He attempted to negotiate a payment plan with the City. While negotiations were going on the City transferred this account for collection action by the law firm of Linebarger, Goggan, Blair and Sampson LLP (hereafter "Linebarger").
3. The delinquency owed by Petitioner included tax principal, interest, penalties, lien charges and legal fees for the property at 550 Allengrove Street Philadelphia, Pa.
4. Petitioner was requesting an abatement or refund of interest and penalties and the legal fees. It was his position that since he was already voluntarily in a negotiation process with the City, the Linebarger firm was not entitled to the \$2200 legal fee.
5. Petitioner testified that he was a schoolteacher who had taken a day off from work to attend the hearing. He had made numerous efforts to negotiate with the City and to reach an agreement to meet his tax obligation. And in fact had paid the entire bill.

Conclusions of Law:

The Philadelphia Code Chapter 19-1705(2) provides that the Tax Review Board has the authority to waive interest and penalty in situations where, in the opinion of the Board, a taxpayer demonstrates good faith, lack of negligence or intent to defraud the city.

Petitioner testified to his various efforts to negotiate with both the City of Philadelphia Revenue Department and the City's co-counsel, Linebarger, in an attempt to work out payment terms for the delinquency he inherited along with the property. Petitioner was not seeking to avoid the obligation. To the contrary, Petitioner paid all the charges billed prior to his Tax Review Board hearing.

Among the charges contested by Petitioner are the attorney fees assessed for the collection of the delinquent taxes, interest and penalties. The imposition of reasonable attorneys fees is permissible pursuant to the Municipal Claims and Tax Liens Act, 53 P.S. §7106, as adopted in The Philadelphia Code Chapter 19-3101. "Where attorney fees are sought to be collected in connection with the collection of a delinquent account, including municipal claims, municipal liens, taxes, tax claims and tax liens, the owner may petition the court of common pleas in the county where the property subject to the municipal claim

and lien, tax claim and lien or taxes is located to adjudicate the reasonableness of attorney fees imposed.” 53 P.S. §7106(a.1). The statute specifically provides that the avenue of appeal as to the reasonableness of any attorney fees imposed is to the court of common pleas, and so the Tax Review Board does not have jurisdiction to review these fees.

The Philadelphia Code Chapter 19-1703 provides for a refund process that, if successful for the petitioner, avoids the need for an administrative hearing. The ordinance does not expressly state that a refund case may not originate with the Tax Review Board. While the Tax Review Board as a matter of usual practice requests that petitioners first attempt to obtain the refund by using the Department of Revenue refund process, the Board has traditionally exercised discretion to proceed to hear cases in a refund posture where for one reason or another the petitioner has chosen to engage the administrative review process before or in lieu of completing the Department’s refund process.

With all parties present and prepared to proceed the TRB saw no need to refer this taxpayer back to the Revenue Department’s Refund Unit to file a refund request that if or when denied would lead him right back to a hearing before the Board.

The City was represented by counsel prepared to defend the assessed charges. Petitioner wanted to proceed. No one was disadvantaged by the Tax Review Board’s decision to go forward with the hearing. Petitioner testified that he had taken a day off from work to attend the hearing. It would have served no purpose for either party to send him away to come back another day and to miss another day’s work. In addition, it was to the City’s advantage to be one step closer to a final decision and resolution of the matter.

Therefore, following the completion of the hearing, it was the decision of the Tax Review Board to abate one-half of the interest and all of the penalties.

Concurred:

Derrick Johnson
Joseph Ferla
Una Vee Bruce
Sharon Losier, Esq.