

15-9

April 29, 2015

IN RE: ENDS, LLC

DOCKET NUMBERS: 36BPMERZZ8005 & 36WMMMERZZ9305

Statement of Record:

1. ENDS, LLC filed a Petition for Appeal on December 20, 2013 to the Tax Review Board for an assessment bill for Business Income and Receipts Tax and Wage Tax for the years 2009 through 2012. The Petition for Appeal stated the Petitioner was requesting a re-audit for the tax years in question.
2. A public hearing before the TRB was scheduled for May 20, 2014. The matter was continued at that time, so that the re-audit requested by Petitioner could occur. The TRB directed the City to, within 30 days, provide to Petitioner the list of required documents for the re-audit. Petitioner was directed to provide those documents within 30 days of receiving the City's list of requested documents. The TRB requested to be notified by each party when their action was completed. The TRB then determined it would schedule a status hearing in 90 days to be updated.
3. The TRB received a copy of the letter from the City's counsel sent to Petitioner's representative, dated May 23, 2014, and the attached list of documents requested for the re-audit of Petitioner's account.
4. The TRB received a letter from Petitioner's representative stating his refusal to provide the requested documents to the City's counsel and his position that he would send such documentation only when it "is requested by the City of Philadelphia Department of Revenue Audit Division upon receipt from the City of Philadelphia Department of Revenue Audit Division of notification of the re-audit and who has been assigned to handle the audit.
5. As authorized by the TRB, its Executive Director, sent a response letter to Petitioner's representative to inform him that the request for documents by the City's attorney was in compliance with the Board's directive at the hearing of May 20, 2014. This letter reiterated that a status hearing would be scheduled for the end of July. This letter was dated June 2, 2014.
6. The TRB received a letter dated June 19, 2014 from Petitioner's representative to confirm that some, but not all, requested documents had been transmitted to the City's attorney.

7. A public hearing before the TRB was scheduled for July 13, 2014. Petitioner has not provided the TRB with the transcript for this hearing and so the full discussion at that hearing is not part of this record. The matter was continued at that time for Petitioner to provide additional documents.
8. A public hearing before the TRB was scheduled for August 12, 2014. Petitioner has provided the TRB with the transcript from this hearing for purposes of preparing this certified record.

At this hearing, the TRB reviewed a letter from Petitioner's representative, faxed to the TRB that day, requesting a continuance due to "receiving notice of death that will require my assisting my son during these sad times." Petitioner did not appear at the hearing.

It was the decision of the TRB to deny this continuance request as it did not contain sufficient information as to why a last minute continuance was required.

TRB members then questioned the City representative as to whether Petitioner's representative had provided additional documents as directed to at the July 31, 2014 so that the City could begin its audit. The City representative replied that the documents received were insufficient and the information provided was incomplete.

The decision of the Tax Review Board was to deny the Petition for Appeal.

9. Petitioner filed an appeal to the Court of Common Pleas.

CONCLUSIONS OF LAW:

In an administrative hearing before the Tax Review Board, the burden of proof is on the petitioning party to provide substantial evidence to establish that the tax assessment under appeal is defective or warrants adjustment.

In this circumstance, Petitioner requested the opportunity for a re-audit by the Department of Revenue prior to proceeding with a TRB hearing. The Board granted this opportunity and time for Petitioner to provide its documents to the City for review and audit so that assessment could be made using Petitioner's information. The TRB even asked the City's attorney to provide the list of documents needed so the audit could go forward promptly.

Petitioner refused to provide the documents to Counsel for the City and when further directed by the TRB to do so, failed to provide all documents and failed to offer an explanation to the TRB for why all documents were not submitted. He repeatedly

requested a re-audit rather than a review hearing and was provided that opportunity. He then did not provide the City with the needed documentation.

The TRB scheduled and continued the case more than once to give Petitioner's representative ample time to gather needed documents, provide them to the city, engage in the re-audit and provide the petitioner with every opportunity to get a fair and accurate assessment of taxes owed.

Petitioner's representative neither provided the documents nor provided satisfactory explanation as to why he would not comply with the TRB direction to supply the documents requested for re-audit.

And even after that, the TRB was still ready to just move ahead for an administrative review hearing to give Petitioner, again, every opportunity for a fair review of its challenge to the city's tax assessments.

As a result, the TRB scheduled the hearing of August 12, 2014 for the purpose of proceeding with a hearing on the merits of the appeal. No one appeared for Petitioner to put forth its case as to why the assessment under appeal should be abated or adjusted.

It was the finding of the TRB that Petitioner was provided sufficient opportunity and notice throughout the TRB process to put forth its case either to the Revenue Department or the TRB. At every turn, Petitioner chose to provide incomplete information and documents, and at one point, no documents at all despite the TRB's very clear directive issued in an effort to offer Petitioner exactly what it had requested- a re-audit.

Therefore the petition was denied.

Petitioner appealed this decision to the Court of Common Pleas and has yet to fully comply with the Court's Case Management Order to provide the TRB with the hearing transcripts. The TRB has received the transcript for the August 12, 2014 hearing but, to date, not the transcript for the hearing of July 13, 2014.

CONCURRED:

Nancy Kammerderner, Chair
George Mathew, CPA
Joseph Ferla
Christian DiCicco, Esq.