

February 6, 2015

15-5

IN RE: George Twardy, Jr.

Docket Number: 36BPREFZZ9724

### Statement of Record

1. George Twardy, Jr. (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on March 4, 2014 requesting refund of an overpayment of Business Income and Receipts Tax (BIRT) for 2004.
2. A public hearing before the Tax Review Board was scheduled for July 8, 2014. This hearing was continued at the request of the City of Philadelphia Law Department.
3. A public hearing was scheduled before the Tax Review Board for September 25, 2014 and continued at that time.
4. A public hearing was scheduled before the Tax Review Board for December 2, 2014. At the conclusion of this hearing, the Tax Review Board announced its decision to grant a credit of
5. The City of Philadelphia filed an appeal to the Court of Common Pleas.

### Findings of Fact:

1. In April 2005, Petitioner filed a timely BIRT return with the City of Philadelphia. As a result of prior payment through the years, Petitioner had overpayments on his BIRT account of approximately with the filing of this return which was for the tax year 2004.
2. When filing this return, Petitioner requested that of the overpayment for the following BIRT year and that be refunded.
3. The refund request was denied because Petitioner had outstanding liabilities for Use & Occupancy Tax. At some point, Petitioner made arrangements and paid these outstanding taxes.
4. Petitioner filed a second refund request in April 2008 for the overpayment. This refund request was denied as Petitioner owed Wage Tax for certain periods.
5. Petitioner made arrangements to pay these outstanding taxes due in April 2008. The City's position was that it was then Petitioner's obligation to file a refund request again and within the 3 year statute of limitations period from the April 2005 BIRT filing date..
6. Throughout the time from 2005 to the Tax Review Board hearing, Petitioner, his accountant, and his attorney made numerous phone calls and written attempts to contact the Department of Revenue and Law Department to resolve his outstanding tax liabilities. At all times, he made clear that he was seeking a refund of this overpayment or a credit toward other tax liabilities.
7. At various times between 2005 and 2008, the City claimed to have used some of the to pay other liabilities owed by Petitioner so that at the time of the Tax Review Board hearing, the City was showing that the overpayment had been reduced to

- somewhere between [redacted] and [redacted]. But the City was unable to clearly show to which tax and tax period any of the [redacted] had been moved.
8. Petitioner continued to call and write the Department of Revenue although he did not file another formal refund petition with Revenue after April 2008.
  9. The City acknowledged the overpayment until May 2008 when the remaining amount was written off as no longer available for refund or credit because 3 years had elapsed from the time of payment. It was the City's position that Petitioner had the obligation to file another refund request with the Department of Revenue after clearing up any other open tax liabilities due in April 2008.

**Conclusions of Law:**

The Philadelphia Code provides the parameters for taxpayer refunds as follows:

*19-1703. Refunds.*

*(1) (a) The Department of Revenue may grant a refund, in whole or in part, upon determination that a tax, water or sewer rent, license fee or other charge, interest or penalty, or any part thereof, has been paid under mistake of law or fact, or under an invalid law...*

*(d) Every petition for refund of moneys collected by the Department on or after January 1, 1980, for or on behalf of the City or the School District of Philadelphia, including but not limited to any tax, water or sewer rent, license fee or other charge, and interest and penalties thereon, shall be filed with the Department within 3 years from the date of payment to the City or the School District of Philadelphia or the due date, whichever is later.*

The Philadelphia Code Chapter 19-1703(7) also provides that a denial of a refund request by the Revenue Department may be appealed to the Tax Review Board within 90 days of the department denial.

Petitioner's original refund request was in April 2005 as part of the tax return filing that created the refund. This refund request was denied in December 2005. His second refund request was a formal request to Revenue Department in April 2008. Through to the 2014 Tax Review Board hearing, Petitioner wrote, called and filed requests for this refund.

At no time did the City deny that he had this [redacted] overpayment in 2005. The City knew at all times that Petitioner was seeking either a refund of the overpayment or a credit against any other tax liabilities be they BIRT, Use & Occupancy taxes or Real Estate taxes.

While the City acknowledged both the credit and that through the years, Petitioner had other outstanding tax liabilities, there was no explanation as to why this refund wasn't either released after he paid the other liabilities or used for these liabilities. Petitioner made two timely refund

requests following the City's refund request processes, which were acknowledged and denied, and numerous informal requests which were not acknowledged.

The City argued the threshold position that Petitioner's TRB petition was beyond the statutory 90 day filing requirements for refunds.

His 2014 Tax Review Board petition was accepted Nunc Pro Tunc by the Board because the Petitioner spent years dealing with the Department of Revenue Department and city employees, believing he could handle his tax issues and resolve the refund matter directly with the Revenue Department employees. The confusion and lack of response from the city contributed to the delay in reaching the Tax Review Board. In addition, his eventual filing of the TRB petition did not create a surprise to the city as he continually made requests for the refund from the time of the original tax filing in April 2005.

It was the decision of the Tax Review Board that Petitioner be granted credit for the overpayment of April 2005. There was no dispute that in April 2005 Petitioner's BIRT account showed an overpayment of . The city's information as to how or whether any of the original was actually allocated to outstanding tax liabilities was unclear and confusing and therefore not accepted by the Board.

The Philadelphia Code is silent on the issue of credits for overpayments. The City takes the position that refunds and credits are interchangeable as concepts or principles and therefore where the Code limits refunds, the same limitation for credits is implied. There is no express limitation in the ordinance using the term "credit".

The city extinguished Petitioner's credit 3 years after the due date and payment based on its position that The Philadelphia Code refund limitations applies to credits as well.

It is the finding of the Tax Review Board that a refund is not the same thing as a credit. The 2 words are not synonyms. In application as well, credits are not identical to or interchangeable with refunds and the TRB disagrees with the City interpretation that The Philadelphia Code section that limits refunds also limits credits to a 3 year time period.

The public policy supporting statutes of limitations is that governments are entitled to use these limitations as tools for budgetary planning and certainty. Unlimited refund opportunities would create instability in this planning process.

The same is not true for credits which are prospective in nature and can be planned for going forward. In addition, in this specific case the petitioner never stopped asking for a refund or credit for the overpayment. The City was on notice from the very first possible circumstance, the filing of the return in April 2005, that Petitioner had overpaid and was seeking the return of this overpayment. While the City argued that Petitioner's refund request was now

**Conclusions of Law:**

The Philadelphia Code Chapter 19-1705(2) provides that "(u)pon the filing of any petition for the waiver of interest and penalties accruing upon any unpaid money or claim collectible by the Department of Revenue, for or on behalf of the City or the School District of Philadelphia, the Tax Review Board may abate in whole or in part interest or penalties, or both, where in the opinion of the Board the petitioner acted in good faith, without negligence and no intent to defraud."

Although Petitioner purchased the property for only \$100,000, the house needed extensive renovations before being habitable. Petitioner purchased the house and paid for these renovations so that her daughter and granddaughter would have a place to live. Petitioner was not engaged in a for-profit enterprise but was trying to provide for her family. She was unaware at the time of purchase that there were tax delinquencies as she did not have a title search at that time.

She expressed her understanding that the taxes were her responsibility and that she would pay them.

The findings of the TRB was that Petitioner had not intended to defraud the city. However, as a property owner, Petitioner was responsible for determining at the time of purchase if there were tax delinquencies, and if choosing to purchase anyway at the cost of only \$100,000 then she knew or should know that she would become the responsible party for the delinquent taxes.

Therefore, the decision of the TRB was to abate 75% of the penalty and 75% of the interest contingent on Petitioner entering into a payment arrangement for the balance due within 30 days.

**Concurred:**

Nancy Kammerdeiner, Chair

Joseph Ferla

Christian DiCicco, Esq.

George Mathew

Martin Bednarek