

November 28, 2012

IN RE: WALTER HODOROWSKI

DOCKET No:36NPMERZZ9209

Statement of Record:

1. Walter Hodorowsky (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on August 12, 2011 requesting review of a Net Profits Tax assessment including principal, interest and penalties for the years 2005 through 2010.
2. A public hearing before a Tax Review Board Hearing Master was held December 16, 2011 and the petition was denied as Petitioner failed to appear for the hearing.
3. Petitioner requested and was granted a rehearing.
4. A public hearing before a Tax Review Board Master was held April 25, 2012. The decision of the Master, as ratified by the Tax Review Board, was to abate of the penalty contingent on entering into a payment agreement within 30 days of the mailing of the TRB decision
5. Petitioner requested and was granted a hearing before the full TRB.
6. A public hearing before the TRB was held on July 10, 2012. At the conclusion of the hearing, the TRB announced its decision to abate of the penalties and of the interest contingent on entering into a payment agreement within 60 days of receipt of the adjusted bill.
7. Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

1. Petitioner appealed a Net Profits Tax (NPT) assessment for the tax years 2005 through 2010. The tax principal due was, with interest of and penalty off, as of the TRB hearing date, for a total due off
2. At the start of the TRB hearing, the City objected to the TRB's jurisdiction, arguing that prior to the TRB hearing, Petitioner had entered into a payment agreement with the City of Philadelphia Department of Revenue (Revenue) and a provision of that agreement was a waiver of his right to continue his appeal of the assessment to the TRB.
3. Petitioner denied signing any payment agreement with Revenue for this tax assessment. He acknowledged making a payment after meeting with a Revenue auditor between the TRB Master hearing and the full board hearing but was adamant that the payment was not pursuant to a written agreement with the City.
4. The City did not have a copy of any such agreement nor a record in its computer system that an agreement had been reached with Petitioner.
5. The City relied on notes in its computer system that established that Petitioner had been into the office to discuss this tax liability and had subsequently made a payment as conclusive

- proof that an agreement had been entered into with Petitioner that included a waiver of appeal rights, although no such language was in these notes.
6. Petitioner testified that following the Master's hearing, he appealed to the full board for a hearing and never indicated any intention to withdraw this appeal. He met with the auditor and made the payment because he was told at that meeting that he was required to do so.
  7. Petitioner resided in Philadelphia during all the years in question.
  8. Petitioner received rental income from a condominium unit located in New Mexico that he had purchased in 2004 while living there.
  9. In 2005, Petitioner relocated to Philadelphia and hired a property manager to handle rental activity for the New Mexico condominium.
  10. Petitioner testified that he had problems with tenants who did not always pay the full rent and did significant damage to the property, all of which he was responsible to repair. He testified to significant expenses for this unit. He testified that the tax assessment was a financial hardship but did not deny receiving rental income from the property.
  11. Petitioner prepared his own tax returns without the assistance of a professional tax preparer and was unaware that rental income may be subject to the Philadelphia Net Profits Tax.
  12. Revenue contacted Petitioner sometime in 2011 regarding possible tax liabilities and requesting he respond. Revenue had information at that time from the IRS and Petitioner's federal tax returns that indicated he could owe taxes to the city.
  13. When contacted by Revenue, Petitioner responded promptly. He contacted Revenue and he filed a TRB petition.
  14. Petitioner continued to assert that he did not believe he should be responsible for any of the assessment, including the tax principal.

#### Conclusions of Law:

As to the threshold question of the TRB's jurisdiction to review the merits of Petitioner's appeal, the decision of the TRB was that Petitioner did not waive his right to an administrative appeal before the board.

Petitioner testified that he never signed a payment or settlement agreement of any kind with the city. While the City put forth the argument that Petitioner did enter into an agreement to pay the taxes and that the agreement contained a waiver of his appeal rights, it could not produce the agreement. The City's only evidence was notes in the computer system that showed only that Petitioner spoke to someone in Revenue and made a payment. There were no notes to confirm that a payment agreement had been reached and signed or any language to show that Petitioner had agreed to waive his appeal rights.

At the time of the meeting at which City representatives stated Petitioner had entered into an agreement with them to pay the full assessment and relinquish his appeal rights, Petitioner had already filed his appeal to the TRB and had a first level Master's hearing. He testified that he knew

he could appeal that decision to the Tax Review Board and intended to do so. He testified that he never intended to relinquish his opportunity to be heard by the full TRB.

It was the conclusion of the board that a \$100 payment alone is not conclusive evidence of a signed payment agreement nor conclusive evidence that Petitioner waived his appeal rights, knowingly or unknowingly. There was no documentation or record of any payment agreement having been entered into by Petitioner.

As to the merits of Petitioner's appeal, the NPT assessment for rents received from the property located in New Mexico was subject to the NPT. The Philadelphia Department of Revenue Income Tax Regulations §220(b)(1)(a) authorizes the imposition of NPT on income from rental real estate, including real estate located outside of Philadelphia where the taxpayer is a Philadelphia resident and states as follows:

(1) Income from Rentals and/or Sale of Real Estate.

(a) Income from Rental of Real Estate.

Renting to another, real property, which was deliberately acquired by the lessor for the purpose of renting all, or part of the property to another, is subject to tax. If property is purchased for the sole purpose of use by the purchaser as a place of residence and/or for use by the purchaser in the conduct of a business other than the rental of the property, and if the purchaser of the property fails to initiate, or terminates, the residential or other business use for which that property was acquired, and continues to own that property, and rents it to another, then the property shall be presumed to have been deliberately acquired for the purpose of renting it to another, at a date commencing with the initial rental of the property by the purchaser...

If a property is located outside of the geographical limits of the City of Philadelphia, the income from the said property is taxable to the extent of the interest of resident Philadelphia beneficiaries therein. (By beneficiaries are meant persons who are receiving income from the property.)

Petitioner admitted that he owned the property in New Mexico and had tenants in the property during years in which he resided in Philadelphia. While the rents may have been sporadic and there may have been expenses associated with the property, that does not relieve Petitioner of his tax obligations to Philadelphia notwithstanding that he may have been unaware of this obligation. The NPT is a self-assessed tax and it is the responsibility of the taxpayer to make himself knowledgeable as to his tax obligations to the City.

However, when notified by Revenue that he could have an unpaid tax liability due to the City, Petitioner responded promptly. He contacted Revenue representatives and he filed a Tax Review

Board petition. Although he believed that he was not subject to the NPT, he continued to speak with Revenue representatives as he pursued his TRB appeal, and even made a small payment when told it was required as part of a City policy.

The Philadelphia Code Chapter 19-1705(2) provides that the TRB may abate interest and penalties in whole or in part "where in the opinion of the Board the petitioner acted in good faith, without negligence and no intent to defraud. "

It was the finding of the TRB that Petitioner met this standard imposed by the Code and therefore the decision of the TRB was to abate 100% of the accrued interest, all of the penalties and allow Petitioner 60 days from the date of the revised bill to enter into a payment agreement for the balance due.

Concurred:

T.David Williams, Esq., Chair

Joseph Ferla

Nancy Kammerdeiner

George Mathew, CPA