

April 11, 2012

In Re: Keystone Health Plan East
Docket Nos: 36BPREFZZ9786 and 9794

In Re: QCC Insurance Company
Docket Nos: 36BPREFZZ9785 and 9795

Statement of Record:

1. QCC Insurance Co. (hereafter referred to as "QCC" or "Petitioner(s)") filed with the Tax Review Board (hereafter "TRB") on October 30, 2009 Petitions for Appeal of refund denials by the City of Philadelphia Department of Revenue (hereafter "the City" or "Revenue") for Business Privilege Tax (BPT) for the years 2003 (TRB Docket No: 36BPREFZZ9795) and 2004 (TRB Docket No: 36BPREFZZ9785).
2. A public hearing before the TRB was scheduled for QCC for June 24, 2010 and continued at Petitioner's request.
3. Keystone Health Plan East (hereafter "KHPE" or "Petitioner(s)") filed with the TRB on October 30, 2009 Petitions for Appeal of refund denials by the City for Business Privilege Tax for the years 2003 (TRB Docket No: 36BPREFZZ9794) and 2004 (TRB Docket No: 36BPREFZZ9786).
4. A public hearing before the TRB was scheduled for KHPE for June 24, 2010 and the case was continued at the request of both parties.
5. A public hearing for KHPE was scheduled before the TRB for September 21, 2010 and the case was continued at the public hearing.
6. A status hearing for KHPE was held on October 28, 2010 at which time the parties agreed to a briefing schedule, to include the stipulated findings of fact presented to the TRB at this hearing. The case was then taken under advisement by the TRB pending submission and review of the briefs.
7. Pursuant to email correspondence dated December 28, 2010 the attorney for KHPE entered his appearance on behalf of QCC and requested the 4 cases represented by the TRB docket numbers captioned above be consolidated. There being no objection from the City's attorney the separate appeals filed by Petitioners were consolidated for purposes of any evidentiary hearings and review due to the similarity of facts and identical nature of the legal issues put before the TRB.
8. Following review of the submitted briefs on behalf of Petitioners and the City, on July 28, 2011, the TRB through its Executive Director, posed the following question to the parties: "What is the actual due date for the BPT under 19-2600 et

seq. and any corresponding regulations?" A jointly prepared response was received August 22, 2011 on behalf of the City and Petitioners. A joint follow-up response was received on October 17, 2011.

9. The TRB announced the following decision at a public hearing on December 29, 2011:
The city shall issue a credit on each Petitioner's BPT account to the extent the overpayments identified on the amended returns resulted from the taxpayers' estimated payments. The taxpayers may not obtain a refund only a credit on their accounts.
10. The City filed appeals to the Court of Common Pleas on January 27, 2012 for these 4 TRB docket numbers related to QCC and KHPE.
11. Petitioners filed appeals to the Court of Common Pleas for these 4 TRB docket numbers related to KHPE and QCC on January 31, 2012
12. At the request of all parties, by motion dated February 29, 2012, all matters were consolidated for purpose of consideration by the Court of Common Pleas.

Findings of fact:

1. The Stipulations of Facts agreed to and submitted by the parties to this appeal are hereby incorporated by reference.

Conclusions of Law:

Petitioners appealed the decision of the Philadelphia Department of Revenue to deny their requests to have refunded Business Privilege Tax (BPT) overpayments for the years 2003 and 2004. These overpayments arose as a result of IRS adjustments to their 2003 and 2004 federal income tax returns.

The facts for each petitioner are not in dispute. Each petitioner filed timely BPT returns for the years in question. At the time of the filings or by the April 15th due date each petitioner remitted the amounts due for those tax years and the required estimated tax payments for the subsequent tax years.

When calculating the net income portion of their BPT liabilities, each petitioner elected to do so pursuant to The Philadelphia Code Chapter 192601(a)(2) using the Federal Taxable Income Method, also known as Method II.

Following IRS audits involving each petitioner and concluding on or about February 17, 2009, the IRS issued their Revenue Agent Reports (RARs) that reduced substantially the federal taxable income for these tax years for each petitioner.

Each entity then filed amended BPT returns for the years adjusted by the IRS and as required by BPT Regulation 205. Due to the reduced taxable income reported on these amended returns and the corresponding reduction of BPT liabilities, each Petitioner

The language in Section 19-2610 is clear. The Department is required to have regulations that provide for, inter alia, "credits to be granted on *any* overpayment of estimated tax payment" (emphasis added). The relevant import in the instant matter is that taxpayers shall receive credits when their estimated payments contribute to overpayments. Here, the Department did not issue credits to the petitioners for the overpayments as the result of the petitioners' estimated 2003 and 2004 tax payments.

By way of further explanation, it was clarified by TRB Chair Williams at the December 29, 2011 with the following example:

For QCC 2003 it appears that the petitioner sought a refund of [redacted] The estimated payment made on April 15, 2003 was [redacted] (T) to the extent that the [redacted] in the estimated payments made on April 14, 2003 cover the [redacted] or [redacted] sought in refunds a credit shall be issued for that... (T) to the extent the estimated payments made include enough for a credit of the refund sought, then ... the credit shall be granted. See December 29, 2011 Notes of Testimony, Page 9.

Therefore, it was the decision of the TRB that the petitioners were entitled to credits for "any" overpayments created as a result of the petitioners' estimated tax payments. And, as the stipulated Findings of Facts demonstrated that there were overpayments of estimated payments equal to or greater than the amount of the refunds sought, the TRB ordered credits be issued to Petitioners on each account.

Finally, because it determined that Petitioners were not entitled to actual refunds for the overpayments caused by the estimated payments based on 19-1703, the TRB ordered that the credits granted could not be reduced to cash refunds and, instead, were to remain on petitioners' accounts and be applied to satisfy the petitioners' later incurred tax liabilities.

Concurred:
T. David Williams, Esq., Chair
Joseph Ferla
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