

April 7, 2014

IN RE: Nathan Lerner

STATEMENT OF RECORD:

1. Nathan Lerner (hereafter "Petitioner") attempted to file a Petition for Appeal with the Tax Review Board (TRB) on November 15, 2013 requesting, inter alia, review of an assessment by the City of Philadelphia Department of Revenue (Revenue) for the Business Privilege Tax (now known as the Business Income & Receipts Tax or BIRT) for the tax year 2006.
2. By letter dated November 19, 2013, this Petition was returned to Petitioner with the explanation that this tax matter had been reviewed by the Tax Review Board as part of a prior petition filing and a public hearing before the TRB under Docket Number 36BPMERZZ835. As part of that public hearing a final decision was rendered on these matters on May 22, 2012. Petitioner appealed this May 22, 2012 TRB decision to the Court of Common Pleas under case
3. Petitioner filed an appeal from the November 19, 2013 return of his duplicative Petition for Appeal to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner filed a Tax Review Board Petition for Appeal on November 12, 2010. This petition requested, inter alia, review of a BIRT assessment for the years 2000 to 2006 and an NPT assessment for the years 2000-2006.
2. A TRB hearing on the BIRT matter on this petition was held on May 22, 2012. Petitioner was present at this hearing. At the conclusion of this hearing, a final decision was announced by the Chairman of the TRB. Subsequent to this hearing, a letter with the decision of the TRB was sent to Petitioner.
3. Petitioner filed an appeal from the May 22, 2012 decision to the Court of Common Pleas.
4. On July 23, 2012, Petitioner attempted to file a TRB Petition for Appeal for the BIRT and NPT assessments and tax years that were the subject of the May 22, 2012 TRB final decision. Because the TRB had already adjudicated these matters, assessments for these specific tax years for these specific taxes were no longer available to be reviewed by the Tax Review Board.
5. This July 23, 2012 duplicative petition was returned to Petitioner by letter dated July 25, 2012 as the matters it referenced for appeal had already been adjudicated by the TRB. Explanatory letters were sent to Petitioner explaining that the BIRT and NPT assessments listed for appeal in this new petition would not be reopened. Although the letters mistakenly listed that the Petition for Appeal had been received by the TRB on July 16, 2012, it had in fact been received July 23, 2012 as evidenced by the TRB date and time stamp on the Petition and by the date on the Petition itself entered by Petitioner prior to submitting it to the TRB.
6. Petitioner filed an appeal to the Court of Common Pleas from the return of the petition of July 23, 2012 with the assigned case

7. On November 15, 2013, Petitioner filed a Petition for Appeal with the Tax Review Board. This petition requested review of the BIRT for 2006 and Earnings Tax assessment for 2011 and 2012.
8. By letter dated November 19, 2013, Petitioner was advised that the TRB would not accept the Petition for Appeal to review the BIRT for 2006 because it had been the subject of a TRB review and decision rendered on May 22, 2012. The letter further stated that the Petition for Appeal was accepted for the Earnings Tax assessments and that Petitioner would be notified of the date and time of the TRB hearing for the Earnings Tax appeal when scheduled.
9. Petitioner filed the current appeal to the Court of Common Pleas for the BIRT.

DISCUSSION:

The BIRT assessment for which Petitioner sought review in the November 15, 2013 Petition for Appeal was reviewed by the TRB under a previous Petition for Appeal with a decision rendered on May 22, 2012. Petitioner was present at the hearing before the TRB and was also sent a decision letter to memorialize the decision announced at the conclusion of the hearing.

Article XV of The Philadelphia Tax Review Board Procedural Regulations provides a procedure for a party to request a rehearing within 30 days of a TRB decision where new and relevant evidence not available at their TRB hearing has been discovered or there is some other compelling reason to reopen the case.

Following the May 22, 2012 TRB decision, Petitioner did not request a rehearing. The Petition for Appeal of November 15, 2013 did not reference the prior TRB hearing, was not within the requisite 30 days for a timely rehearing request and did not present new evidence for the Board's consideration.

This Petition for Appeal of November 15, 2013 was duplicative of a prior petition for which a final decision had been rendered at a public hearing before the Board on May 22, 2012, and therefore no longer subject to review by the TRB.