

January 31, 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 July 23, 2012 requesting review of assessments 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 years 2000 through the 2006 estimate, and for the Net Profits Tax (NPT) for the tax years 2000, 2002 through 2005.
2. By letter dated July 25, 2012, this Petition was returned to Petitioner with the explanation that these tax matters had been reviewed by the Tax Review Board as part of a prior petition filing and a public hearing before the TRB under Docket Numbers 36BPMERZZ8354 (for BIRT) and 36NPMERZZ9259 (for NPT). 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..
3. Petitioner filed an appeal from the July 25, 2012 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 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 matters 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 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 18, 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.

DISCUSSION:

The specific Petition for Appeal and tax matters in this matter were 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 July 23, 2012 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 July 23, 2012 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.