

14-5

March 3, 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 September 23, 2013 requesting review of assessments by the City of Philadelphia Department of Revenue (Revenue) for the Net Profits Tax (NPT) for the tax years 2000 through the 2005.
2. By letter dated October 10, 2013, 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 36NPMERZZ9259. As part of that public hearing a final decision was rendered on these matters on May 22, 2012. Petitioner had already appealed this May 22, 2012 TRB decision to the Court of Common Pleas..
3. Petitioner has filed an appeal from the October 10, 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 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 was held on May 22, 2012 reviewing among other tax assessments and tax years, the NPT assessment for 2000 to 2005, the subject of this appeal. 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. The TRB had already adjudicated these matters and they were on appeal to the Court of Common Pleas.
5. This July 23, 2012 duplicative petition was returned to Petitioner. Explanatory letters were sent to Petitioner explaining that the BIRT and NPT assessments listed in the Petition for Appeal had already been adjudicated by the TRB and were no longer open to review by the TRB. 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 TRB letter returning this petition.

7. On September 23, 2013, Petitioner attempted to file a TRB Petition for Appeal for the NPT assessments and tax years that were the subject of the May 22, 2012 TRB final decision. Again, because the TRB had already adjudicated these matters, the assessments for these specific tax years for these specific taxes were no longer available to be reviewed by the Tax Review Board.
8. This September 23, 2013 duplicative petition was returned to Petitioner as the matters it referenced for appeal had already been adjudicated by the TRB.
9. A letter dated October 10, 2013 was sent to Petitioner explaining that the NPT assessments listed for appeal in this petition dated September 23, 2013 would not be reopened as the matters it referenced had been subject to a previous review and adjudication by the TRB, as had been explained in the letter that returned to him the petition sent to the TRB on July 23, 2012.
10. Petitioner filed an appeal to the Court of Common Pleas on November 1, 2013.

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 filed on September 23, 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 September 23, 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. In addition, this assessment has been on appeal to both the Philadelphia Court of Common Pleas and the Commonwealth Court of Pennsylvania, thus divesting the TRB of any jurisdiction.