July 1, 2016 -**Corrected Opinion**

In Re: Ruth A. Lieberman

Docket No: 36SIREFZZ9973

Statement of Record:

1) Ruth A. Lieberman (hereafter "Petitioner") filed a Petition with the Tax Review Board (TRB) on April 30, 2014 for review of a City of Philadelphia Revenue Department (Revenue) denial of Petitioner's request for a refund of School Income Tax (SIT) paid for the years 2007-2012.
2) A hearing before the TRB was held on December 3, 2015. At the conclusion of the hearing, the TRB announced its decision to abate 100% of the interest and 100% of the penalty and to grant a refund for any interest and penalty paid in the years under appeal.
3) Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

Findings of Fact:

CORRECTIONS: Corrections/additions to the original Opinion are underlined:

1) Petitioner <u>was before the TRB requesting</u> a refund of SIT paid for the tax years 2007-2012.

2) <u>This assessment and payments by Petitioner came about as the result of an audit of the tax years 2007 to 2010. Petitioner paid the audit assessment of [redacted] and subsequently requested a refund.</u> <u>A</u>s a result of additional documents received from Petitioner by the Department of Revenue after the original audit and assessment, a recalculation of principal, interest and penalty resulted in a refund in the amount of [redacted] issued to Petitioner prior to any TRB proceedings, leaving a balance for consideration by the TRB of [redacted] <u>for these tax years.</u>

3) <u>Petitioner also paid self-assessed SIT amounts for tax years 2011 and 2012. The amount at issue for 2011 was [redacted] The amount at issue for 2012 was [redacted] ee City Exhibit Pages 12 and 13.</u>

4) Petitioner moved into Philadelphia in 2007.

5) Petitioner paid the SIT on income received from oil well leases in Texas, labeled oil royalties, that fluctuate with the price of oil.

6) Shortly after moving into the City, Petitioner was contacted by an outside vendor hired by the City to assist with tax collection with a letter that stated SIT was owed on the income she was receiving from oil well leases in Texas, labeled "oil royalties".

7) Petitioner did not provide any documentation or testimony to explain the source of this investment income.

8) After consulting with her accountant, whose determination was that she did not owe the SIT on this oil related income, she contacted the outside vendor and presented this position. She testified that they agreed with her accountant's analysis and withdrew the assessment.

9) In or around 2008, Petitioner was contacted by a City representative, again representing that she owed the SIT on the oil related income. She again took her paperwork into the office and was told she did not owe this tax.

10) At some point after that, she was again contacted by the City for payment of this tax assessment. Concerned that interest and penalties were accruing as she attempted to deal with this, Petitioner paid the bill.

11) She subsequently requested a refund from the Department of Revenue which was denied. The current appeal to the TRB followed.

Conclusions of Law:

The School Income Tax (SIT) is a net income tax levied pursuant to The Philadelphia Code Chapter 19-1804(2)(a) as follows:

> (T)he Board is authorized to impose a tax… for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the corresponding Tax Year as set forth in the table below, including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate and of which such person is the substantial owner…

Regulations were promulgated by the City of Philadelphia to facilitate the administration of this tax.

Section 203 of the City of Philadelphia's SIT regulations lists "income included in the tax base" but clearly states that this list is not meant to be all inclusive.

Petitioner argued that the "oil royalty" payments she received were excluded from taxation based on a strict reading of SIT Regulation §203(e)which states

> Royalties. Income received as a royalty from a patent or copyright to the extent they are not subject to the Net Profits Tax are included as income subject to the SIT.

It is Petitioner's position that §203(e) is meant to be an all inclusive definition of what types of royalties are subject to SIT (only copyright and patent). Petitioner argued that only royalties received from a patent or copyright could be taxed under the SIT and that as oil royalties are not specifically listed, they are therefore specifically excluded from taxation under SIT.

A plain reading of §203(e) does not lead to the conclusion that a royalty other than a copyright or patent is excluded by virtue of not being named. It simply explains that in the event that a copyright or patent royalty is subject to the Net Profits Tax (NPT), it would not also be subject to the SIT. It is not a definitional section limiting taxation of royalty income to only copyright and patent royalties.

Regulations are meant to explain and facilitate administration of a statute or ordinance and cannot expand or rewrite the plain meaning of the specific statute or ordinance.

In addition, if the TRB was inclined to interpret the regulation as a limitation subjecting only the listed royalty categories to this tax, and excluding all other royalties, it was not clear from the evidence presented by Petitioner that this income labeled "oil royalty" was, in fact, a royalty as generally defined and understood. Merriam-Webster dictionary defines a royalty as "a share of a product or profit (as of a mine) claimed by the owner for allowing another to use the property". Petitioner provided very limited and vague information as to the source and nature of this income labeled "oil royalty". When questioned about the source and characterization of the income by the TRB Chair Nancy Kammerdeiner, the description, while clear that it was not earned income for Petitioner, was vague as to its source, with no documentation to substantiate the label of "royalty". Simply naming something a royalty does not make it so.

As to interest and penalty, The Philadelphia Code Chapter 19-1705(2) provides that "(u)pon the filing of any petition for the waiver of interest and penalties accruing upon any unpaid money or claim collectible by the Department of Revenue, for or on behalf of the City or the School District of Philadelphia, the Tax Review Board may abate in whole or in part interest or penalties, or both, where in the opinion of the Board the petitioner acted in good faith, without negligence and no intent to defraud."

Petitioner responded and cooperated each time she was contacted by the City's agent or representative. She provided all documents as requested and was met with confusion on the City's part as to the validity of the initial assessments. Finally, in an effort to reduce any added interest and penalty charges, she paid the assessment while continuing her challenge. Therefore, it was the decision of the TRB that she fully met the standard set forth in The Philadelphia Code and all interest and penalty accrued against the assessment should be abated.

Concurred:

Nancy Kammerdeiner, Chair
Joseph Ferla
George Mathew, CPA
Martin Bednarek
Kaitlin McKenzie-Fiumara, Esq.